11-9-79
Vol. 44 No. 219
Pages 65025-65378

federal register

Friday
November 9, 1979

Highlights

65186 College Library Resources Program HEW/OE gives notice of closing date for transmittal of applications for basic grants

65187 Metric Education Program HEW/OE extends closing date to 2-14-80 for submission of applications for grant awards

65209 Criminal Justice Justice/LEAA issues notice of solicitation for competitive research grant program

65072 Consolidated Grants to the Insular Areas HEW/PHS issues final rules to implement program; effective 12-10-79

65318 Food Stamp Program USDA/FNS proposes rule concerning various aspects of the program; comments by 1-8-80 (Part IV of this issue)

65077 Food Stamp Program USDA/FNS requests comments by 12-8-79 on establishing procedures for reducing benefits

65352 Radiological Health HEW/FDA establishes a performance standard for sunlamp products and ultraviolet lamps intended for use in products; effective 5-9-79 (Part V of this issue)

CONTINUED INSIDE

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Area Code 202-523-5240

Highlights

65368 **PHA-Owned Public Housing Projects** HUD/FHC issues rule to provide policy and procedures, regarding partial or total demolition of buildings and partial or total disposition of land; effective 12-10-79 (Part VII of this issue)

65360 **Housing—Assistance to Mobile Home Owners** HUD/FHC issues final rule; effective 12-10-79 (Part VI of this issue)

65081 **Housing—Defaulted Multifamily Project Mortgages** HUD/FHC proposes to amend rules relating to payment of insurance; comments by 1-8-80

65061 **Section 8 Housing Assistance Payments Program** HUD/FHC issues interim rule concerning special procedures for moderate rehabilitation program; effective 12-8-79

65060 **Section 8 Housing Assistance Payments Program for New Construction** HUD/FHC issues suspension of enforcement; effective 11-5-79

65055 **Natural Gas** DOE/FERC expands use of budget-type certificates for gas supply facilities; effective 12-1-79

65061 **Income Tax** Treasury/IRS adopts rule concerning collectively bargained plans and plans maintained by more than one employer

65083 **Veterans Benefits** VA proposes rules concerning education loan program; comments by 12-10-79

65274 **Improving Government Regulations** DOE publishes semiannual agenda of regulations (Part II of this issue)

65226 **Safeguarding National Security Information** Selective Service System provides guidance to public in requesting access to classified information; effective 11-6-79

65372 **Atlantic Surf Clam and Ocean Quahog Fisheries** Commerce/NOAA proposes approval and partial disapproval of Fishery Management Plan Amendments; comments by 12-29-79 (Part VIII of this issue)

65234 **Sunshine Act Meetings**

Separate Parts of This Issue

65274 **Part II, DOE**
65290 **Part III, Labor/ESA**
65318 **Part IV, USDA/FNS**
65352 **Part V, HEW/FDA**
65360 **Part VI, HUD**
65368 **Part VII, HUD**
65372 **Part VIII, Commerce/NOAA**

Contents

Federal Register
Vol. 44, No. 219
Friday, November 9, 1979

Agricultural Marketing Service
65049 Lemons grown in Calif. and Ariz.; limitation of handling

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Grain Inspection Service; Food and Nutrition Service; Forest Service; Rural Electrification Administration; Science and Education Administration; Soil Conservation Service.

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant quarantine, Hawaiian and territorial:
65080 Fruits and vegetables; extension of time

Army Department
See Engineers Corps.

Blind and Other Severely Handicapped, Committee for Purchase from
NOTICES
65123, 65124 Procurement list, 1979; additions and deletions (3 documents)

Civil Aeronautics Board
RULES
65052 Improving Government regulations; implementation
PROPOSED RULES
Improving Government regulations:
65104 Regulatory agenda
NOTICES
65114 Certificates of public convenience and necessity and foreign air carrier permits
Hearings, etc.:
65114 Air carriers; agreement filing requirements; exemption; division of joint fares and rates
65115 Trans World Airlines, Inc. discount fare advertising enforcement proceeding
65234 Sunshine Act; meetings (2 documents)

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
65115 California
65116 Delaware
65115 Maine
65115 New Jersey
65116 Pennsylvania
65115 Rhode Island
65116 Vermont
65115 Virginia

Commerce Department
See also Industry and Trade Administration; National Oceanic and Atmospheric Administration.
NOTICES
65121 Part-time employment program

Consumer Product Safety Commission
NOTICES
Meetings:
65124 Toxicological Advisory Board

Customs Service
NOTICES
Trade name recordation applications:
65229 Xylogics, Inc.

Defense Department
See Engineers Corps.

Economics Regulatory Administration
NOTICES
Meetings:
65125 Cherokee Texaco
Natural gas exportation and importation; petitions:
65125 Midwestern Gas Transmission Co. et al.
Remedial orders:
65125 Whelan's Exxon

Education Office
NOTICES
Grant applications and proposals, closing dates:
65186 College library resources program
65187 Metric education program, 1980 FY
Meetings:
65188 Black Higher Education and Black Colleges and Universities National Advisory Committee

Employment Standards Administration
NOTICES
65290 Minimum wages for Federal and federally assisted construction; general wage determination decisions, modifications, and superseders decisions (Ala., D.C., Fla., Ky., La., Md., Mass., Miss., Mo., N.H., N.J., Pa., Tex., and Va.)

Energy Department
See also Federal Energy Regulatory Commission.
PROPOSED RULES
Improving Government regulations:
65274 Regulatory agenda

Engineers Corps
NOTICES
Meetings:
65124 Environmental Advisory Board

Environmental Protection Agency
RULES
65069 Air quality surveillance and data reporting
65066 Air quality surveillance and data reporting; correction
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
65084 Washington
Air quality implementation plans; preparation adoption, and submittal, etc.:
65084 Prevention of significant air quality deterioration (PSD)

NOTICES
Environmental statements; availability, etc.:
65131 Agency statements, weekly receipts
Pesticide registration, cancellation, etc.:
65135 Dibromchloropropane
65131 Killer—for ice plant weeds
Pesticides; tolerances in animal feeds and human food:
65130 Chevron Chemical Co.
Toxic and hazardous substance control:
65179 Chemical substances; availability of initial inventory; supplement

Equal Employment Opportunity Commission
PROPOSED RULES
Procedural regulations:
65082 Charges deferred to appropriate State and local agencies; designated 706 agencies
NOTICES
65234 Sunshine Act; meeting

Federal Communications Commission
NOTICES
Hearings, etc.:
65182 Biard Communications, Inc.

Federal Election Commission
NOTICES
65234 Sunshine Act; meetings

Federal Emergency Management Agency
RULES
Flood elevation determinations:
65074 Pennsylvania; correction
PROPOSED RULES
Flood elevation determinations:
65093 Arkansas et al.
65102 Illinois et al.
65104 Massachusetts
65102 Vermont; correction

Federal Energy Regulatory Commission
RULES
Natural gas companies:
65055 Certificates of public convenience and necessity and abandonment; gas supply facilities, budget-type certificate applications
NOTICES
Hearings, etc.:
65126 El Paso Natural Gas Co.
65127 Kentucky West Virginia Gas Co.
65127 M. H. Marr
65128 National Fuel Gas Supply Corp.
65128 Northern Natural Gas Co.
65128 Public Service Co. of New Mexico
65129 S. D. Warren Co.
65129 Seguin, Tex.
65130 Western Transmission Corp.
Natural gas companies:
65130 Certificates of public convenience and necessity; applications abandonment of service and petitions to amend

Federal Grain Inspection Service
NOTICES
Grain standards; quality analysis elimination:
65111 Wheat, hard red winter; official test elimination

Federal Home Loan Bank Board
NOTICES
65182 Credit rationing; guidance statement
65235 Sunshine Act; meetings

Federal Housing Commissioner—Office of Assistant Secretary for Housing
RULES
Low income housing:
65368 Demolition of structures or disposition of real property, PHA-owned projects
65360 Housing assistance payments; existing housing (Section 8); mobile home owners; rent for "pads"
65061 Housing assistance payments (Section 8); special procedures for moderate rehabilitation programs; legislative authority citation; interim rule and inquiry
PROPOSED RULES
Mortgage and loan insurance programs:
65081 Multifamily housing; mortgages in default; partial payment of insurance claims

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
65183 Frontier Freight Forwarders, Inc.
65235 Sunshine Act; meetings

Federal Mediation and Conciliation Service
NOTICES
Meetings:
65183 Arbitration Services Advisory Committee

Federal Reserve System
RULES
Bank holding companies (Regulation Y):
65051 General insurance sale activities
NOTICES
Applications, etc.:
65184 Barnett Banks of Florida, Inc.
65184 First Kiowa Bancshares, Inc.
65184 First Tahlequah Corp.
65183 Industrial National Corporation
65185 J. J. Flynn Investment Co.
65185 Marine Corp.
65185 Nichols Hills Bancorporation, Inc.
65185 U.S. Bancorp.
65186 Watonga Bancshares, Inc.
65235 Sunshine Act; meetings (2 documents)

Federal Trade Commission
NOTICES
65186 Magnuson-Moss Warranty Act; preemption of State law; extension of time

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
65204 Lower Apalachicola Floodplain in Gulf, Calhoun, and Liberty Counties, Fla.

Food and Drug Administration
RULES
Radiological health:
65352 Sunlamp products; performance standards
PROPOSED RULES
Medical devices, anesthesiology; classification:
65081 Indwelling blood oxyhemoglobin concentration analyzers; correction

65080 Pears, canned; identity and quality standards; reopening of comment period
NOTICES
Food additives, petitions filed or withdrawn:
65190 USDA Northern Regional Research Center
GRAS status, petitions:
65189 Ethyl alcohol containing ethyl acetate
Human drugs:
65189 Benylin cough syrup; withdrawal; hearing; correction
65189 Pneumococcal vaccine, polyvalent; guideline availability

Food and Nutrition Service
PROPOSED RULES
Food stamp program:
65077 Allotments; benefit reduction procedures; advance notice
65318 Food Stamp Act of 1977; State plans of operations

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
65116 Brownsville, Tex.

Forest Service
NOTICES
Meetings:
65111 Bridger-Teton National Forest Grazing Advisory Board
65111 Targhee Forest Grazing Advisory Board

General Services Administration
RULES
Property management:
65071 Advisory committee management, GSA-sponsored advisory committees

Geological Survey
NOTICES
Phosphate leasing areas:
65205 Webster Range—Dry Ridge, Idaho

Health, Education, and Welfare Department
See also Education Office; Food and Drug Administration; Public Health Service.
NOTICES
Human subjects protection:
65191 Fertilization, in vitro and embryo transfer; Ethics Advisory Board report; correction and reopening of comment period
Meetings:
65192 Education Statistics Advisory Council
65192 Telecommunications demonstration program; grant applications solicitation; correction

Heritage Conservation and Recreation Service
RULES
65066 National Register of Historic Places; transfer of regulations from National Park Service; correction

Housing and Urban Development Department
See also Federal Housing Commissioner—Office of Assistant Secretary for Housing.
RULES
Low income housing:
65060 Housing assistance payments (Section 8); new construction; suspension of enforcement

Industry and Trade Administration
NOTICES
Scientific articles; duty free entry:
65117 Buffalo General Hospital
65117 Carnegie-Mellon University
65118 Harvard University
65118 IIT Research Institute
65118 Kansas State University
65119 Massachusetts Institute of Technology
65119 Mount Sinai School of Medicine
65120 National Cancer Institute
65120 University of California
65120 University of Chicago
65121 University of Illinois
65121 University of Kansas
65117 University of Michigan et al.; correction

Interior Department
See also Fish and Wildlife Service; Geological Survey; Heritage Conservation and Recreation Service; Land Management Bureau; National Park Service.
NOTICES
Environmental statements; availability, etc.:
65209 Aravaipa Canyon Wilderness, Safford District, Ariz.

Internal Revenue Service
RULES
Income taxes:
65061 Pension, profit sharing, etc.: collectively bargained and multiple employer maintained plans
NOTICES
Committees; establishment, renewals, terminations, etc.:
65230 Commissioner's Advisory Group
Meetings:
65230 Commissioner's Advisory Group

International Trade Commission
NOTICES
65235 Sunshine Act; meeting

Interstate Commerce Commission
RULES
Railroad car service orders:
65075 Embargo agents; appointment
65075 Rerouting agents; appointment
Railroad operation, acquisition, construction, etc.:
65233 Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
NOTICES
65230 Commission releases; schedule and Code-A-Phone announcement
Motor carriers:
65232 Temporary authority applications
Railroad car service orders:
65231 All railroads
Railroad car service orders; various companies:
65231, 65232 Kansas City Terminal Railway Co. (2 documents)

Justice Department
See Law Enforcement Assistance Administration.

Labor Department
See also Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration
NOTICES
Adjustment assistance:
65213 Annetta of California, Inc., et al.
65210 Barnes & Tucker Co.
65210 Bishop Coal Co.
65210 Carthage Shirt Corp.
65211 Cedar Coal Co.
65211 Clearwater Finishing Plant
65212 Crane Co.
65212 Going On Sportswear, Inc.
65214 Icon, Inc.
65214 Joseph M. Herman Shoe Co., Inc.
65213 K. J. Quinn & Co., Inc.
65215 Marion Harwood Manufacturing Co.
65215 Menser Industries, Inc.
65216 Oliver Tire & Rubber Co.
65216 Santini Corp., Inc.
65217 Stein Henry Co.
65217 Sugarloaf Mining Co.
65218 Textron, Inc.
65218 Walter Wright, Inc.
65218 Ware Knitters, Inc.
65219 Wilshire Fashions, Inc.

Land Management Bureau
NOTICES
Alaska native claims selections; applications, etc.:
65192 Cook Inlet Region, Inc.; correction
65192 Qanirtuug, Inc., et al.
Coal leases:
65197 Colorado and Wyoming; correction
Coal management program:
65196 Coal production regions, identification
Opening of public lands:
65195 Nevada
Sale of public lands:
65195 Wyoming
65197 Southern Appalachian Coal Production Region, Ala.; briefing by Regional Coal Team

Law Enforcement Assistance Administration
NOTICES
Grants solicitation, competitive research:
65209 Unsolicited research program

Merit Systems Protection Board
RULES
65048 Appeals filing; appropriate field offices
65048 Organization and procedures board meetings expedited closure; interim rule and inquiry
NOTICES
65236 Sunshine Act; meeting

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
65219 Big Three Coal Co.
65221 Carol Coal Co., Inc. et al.
65219 Island Creek Coal Co.
65220 L & M Coal Co., Inc.
65220 Mary Lee Coal Co., Inc.
65220 North American Coal Corp.
65221 Summary of granted decisions
65220 Vanhoose Coal Co., Inc.
65221 Youngstown Mines Corp.

National Communications System
NOTICES
Telecommunications standards:
65224 Synchronous bit oriented data link control procedures

National Consumer Cooperative Bank
NOTICES
65236 Sunshine Act; meeting

National Oceanic and Atmospheric Administration
PROPOSED RULES
65372 Surf clam and ocean quahog fisheries; approval and disapproval of fishery management plan amendments

National Park Service
NOTICES
Environmental statements; availability, etc.:
65209 Giant Forest/Lodgepole, Sequoia and Kings Canyon National Parks, Calif.; proposed development concept plan
65206 Jackson Hole Airport, Wyo.; noise abatement plan
Management and development plans:
65206 Curecanti National Recreation Area
Meetings:
65205 Boston National Historical Park (2 documents)
65206 Kalaupapa National Historical Park Advisory Commission

National Science Foundation
NOTICES
Meetings:
65224 Earth Sciences Advisory Committee
65225 Engineering and Applied Sciences Advisory Committee (2 documents)
65225 Ocean Science Advisory Committee
65224 Science and Society Advisory Committee

Nuclear Regulatory Commission
RULES
Domestic licensing:
65049 Power reactors; adjudicatory licensing procedures; modification
NOTICES
Applications, etc.:
65226 Consumers Power Co.
Meetings:
65226 Regional State Liaison Officers

Occupational Safety and Health Administration
PROPOSED RULES
65082 Injuries and illnesses, recording and reporting; fatality or multiple hospitalization accidents; extension of time

Personnel Management Office
RULES
65025 Administrative claims under Federal Tort Claims Act
Excepted service:
65030 Arts and Humanities, National Foundation
65025 Civil Rights Commission (2 documents)

65028 Commerce Department
65026 Community Services Administration (3 documents)
65028 Consumer Product Safety Commission
65029 Equal Employment Opportunity Commission
65029 Federal Maritime Commission
65026-65028, 65031 Housing and Urban Development Department (9 documents)
65029 Justice Department
65030 Metric Board
65029 Small Business Administration
65029, 65030 Temporary boards and commissions (2 documents)
65031 Privacy Act; implementation
65046 Reduction in force; retention preference
PROPOSED RULES
65077 Civil Service Reform superior qualifications appointments; Intergovernmental Personnel Act appointments

Public Health Service
RULES
Grants:
65072 Insular areas; consolidation
NOTICES
Organization, functions, and authority delegations:
65190 Health, Assistant Secretary for

Railroad Retirement Board
NOTICES
65236 Sunshine Act; meetings

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
65112 Tri-State Generation and Transmission Association, Inc.

Securities and Exchange Commission
NOTICES
65236 Sunshine Act; meetings

Selective Service System
NOTICES
65226 National Security Information; safeguarding procedures

Science and Education Administration
NOTICES
Meetings:
65113 Food and Agricultural Sciences Joint Council
65113 National Plant Genetics Resources Board

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
65113 Donahoe Creek Watershed, Tex.

Treasury Department
See Customs Service; Internal Revenue Service.

Unemployment Compensation National Commission
NOTICES
65223 Meetings (2 documents)

Veterans Administration
PROPOSED RULES
Vocational rehabilitation and education:
65083 Education loans
NOTICES
Meetings:
65230 Administrator's Education and Rehabilitation Advisory Committee

MEETINGS ANNOUNCED THIS ISSUE

AGRICULTURE DEPARTMENT
Forest Service—
65111 Bridger-Teton National Forest Grazing Advisory Board, 12-17-79
65111 Targhee Forest Grazing Advisory Board, 11-30-79
Science and Education Administration—
65113 National Plant Genetics Resources Board, 12-3 thru 12-7-79
65113 Executive Committee of the Joint Council on Food and Agricultural Sciences, 11-16-79

CIVIL RIGHTS COMMISSION
65116 Vermont Advisory Committee, 11-28-79
65116 Pennsylvania Advisory Committee, 11-30-79

CONSUMER PRODUCT SAFETY COMMISSION
65124 Toxicological Advisory Board, 11-27 and 11-28-79

DEFENSE DEPARTMENT
65124 Environmental Advisory Board of the Chief of Engineers, 11-28 thru 11-30-79

FEDERAL MEDIATION AND CONCILIATION SERVICE
65183 Arbtration Services Advisory Committee, 12-6 and 12-7-79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
65192 Advisory Council on Education Statistics, 11-28 and 11-29-79
Education Office—
65188 National Advisory Committee on Black Higher Education and Black Colleges and Universities, 12-16 thru 12-18-79

INTERIOR DEPARTMENT
National Park Service—
65205 Boston National Historical Park Advisory Commission, 11-30-79
65205 Boston National Historical Park, 11-26, 11-27, and 11-29-79
65206 Kalaupapa National Historical Park Advisory Commission, 12-13-79

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION
65223 Meeting, 11-30 and 12-1-79
65223 Meeting, 12-13 thru 12-16-79

NATIONAL SCIENCE FOUNDATION
65224 Advisory Committee for Earch Sciences, Geology, Geochemistry and Geophysics Subcommittees, 11-30 and 12-1-79
65224 Advisory Committee on Science and Society, Subcommittee on Oversight, 11-30-79

65225 Advisory Committee for Engineering and Applied Science, Subcommittee for Applied Physical, Mathematical and Biological Sciences and Engineering Sciences, 11-26 and 11-27-79
65225 Advisory Committee for Ocean Sciences, Executive Committee, 11-28 and 11-29-79

NUCLEAR REGULATORY COMMISSION
65226 Regional State Liaison Officers, 11-28 and 11-29-79

TREASURY DEPARTMENT
Internal Revenue Service—
65230 Commissioner's Advisory Group, 11-26 and 11-27-79

VETERANS ADMINISTRATION
65230 Administrator's Education and Rehabilitation Advisory Committee, 12-5-79

CHANGED MEETING

CIVIL RIGHTS COMMISSION
65116 Delaware Advisory Committee, changed from 11-21-79 to 11-20-79

HEARINGS

COMMERCE DEPARTMENT
Foreign-Trade Zones Board—
65116 Proposed Foreign-Trade Zone—Brownsville, Texas, 12-6-79

INTERIOR DEPARTMENT
National Park Service—
65206 Jackson Hole Airport Noise Abatement Plan proposal, 12-10 and 12-11-79

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
177 65025
213 (24 documents) 65025–65031
293 65031
297 65031
351 65046
1201 65048
1206 65048
Proposed Rules:
531 65077

7 CFR
910 65049
Proposed Rules:
271 65077
272 65318
274 65318
276 65318
277 65318
318 65080

10 CFR
2 65049
Proposed Rules:
Ch. II 65274
Ch. III 65274
Ch. X 65274

12 CFR
225 65051

14 CFR
399 65052
Proposed Rules:
Ch. I 65104

18 CFR
2 65055
157 65055

21 CFR
1002 65352
1040 65352
Proposed Rules:
145 65080
868 65081

24 CFR
870 65368
880 65060
882 (2 documents) 65061, 65360
Proposed Rules:
208 65081

26 CFR
1 65061

29 CFR
Proposed Rules:
1601 65082
1904 65082

36 CFR
1202 65066

38 CFR
Proposed Rules:
21 65083

40 CFR
51 (2 documents) 65066, 65069
52 65066
53 65066
58 (2 documents) 65066, 65069
60 65066
Proposed Rules:
51 65084
52 (2 documents) 65084

41 CFR
105-54 65071

42 CFR
50 65072

44 CFR
67 65074
Proposed Rules:
67 (4 documents) 65093–65104

49 CFR
1033 65075
1034 65075

50 CFR
Proposed Rules:
652 65372

Rules and Regulations

Federal Register
Vol. 44, No. 219
Friday, November 9, 1979

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 177

Administrative Claims Under Federal Tort Claims Act

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management changed the names of its regional offices effective August 1, 1979. This rule amends the Federal Tort Claims Act regulations to conform with that change.

It also increases the dollar amount of claims under the Federal Tort Claims Act which are to be presented to the Directors of Regional Offices in recognition of the increased cost of repairs resulting from automobile accidents.

EFFECTIVE DATE: December 10, 1979.

FOR FURTHER INFORMATION CONTACT: Murray Meeker, Office of the General Counsel, 202/632-5530.

SUPPLEMENTARY INFORMATION:

On August 14, 1979, the Office of Personnel Management published a Notice changing the names of its regions (44 FR 47660). This rule amends Part 177 of Title 5 of the Code of Federal Regulations to conform to that change.

The amendment also increases from $200 to $500 as the maximum for claims, where no personal injury is involved, which are to be presented to the Director of the region in which the OPM employee, whose alleged negligence or wrongful act is the basis for the claim, is employed.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.

Accordingly, § 177.102(c)(1) is revised to read as follows:

§ 177.102 Administrative claim; when presented; appropriate OPM office.

* * * * *

(c)(1) When a claim is for $500 or less and does not involve a personal injury, the claimant shall mail or deliver it to the Director of the OPM's regional office which employs the individual whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of. In these cases, the address of the appropriate Regional Director is one of the following:

New England Region, John W. McCormack, Post Office and Courthouse Building, Boston MA 02109 (formerly Boston Region).
Eastern Region, New Federal Building, 26 Federal Plaza, New York, NY 10007 (formerly New York Region).
Mid-Atlantic Region, William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106 (formerly Philadelphia Region).
Southeast Region, Richard B. Russell, Federal Building, 75 Spring Street, SW, Atlanta, GA 30303 (formerly Atlanta Region).
Great Lakes Region, John C. Kluczynski, Federal Building, 29th Floor, 230 South Dearborn Street, Chicago, IL 60604 (formerly Chicago Region).
Southwest Region, 100 Commerce Street, Dallas, TX 75242 (formerly Dallas Region).
Mid-Continent Region, 1256 Federal Building, 1520 Market Street, St. Louis, MO 63103 (formerly St. Louis Region).
Rocky Mountain Region, Building 20, Denver Federal Center, Denver, CO 80225 (formerly Denver Region).
Western Region, 525 Market Street, 23rd Floor, San Francisco, CA 94105 (formerly San Francisco Region).
Northwest Region, Federal Building, 26th Floor, 915 Second Avenue, Seattle, WA 98174 (formerly Seattle Region).

* * * * *

(28 U.S.C. 2672; 28 CFR 14.11; 44 FR 47660)

[FR Doc. 79-34781 Filed 11-8-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Commission on Civil Rights

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Special Assistant to the Deputy Staff Director because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 14, 1979.

FOR FURTHER INFORMATION CONTACT:
On position authority: William Bohling, Office of Personnel Management, 632-4533.
ON position content: Virginia Berry, Commission on Civil Rights, 254-6661.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.

Accordingly, 5 CFR 213.3356(d) is amended as set out below:

§ 213.3356 Commission on Civil Rights.

* * * * *

(d) One Confidential Secretary and one Special Assistant to the Deputy Staff Director.

* * * * *

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

[FR Doc. 79-34686 Filed 11-8-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Commission on Civil Rights

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Special Assistant to the Staff Director because it is confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT:
On position authority: William Bohling, Office of Personnel Management, 632-4533.
ON position content: Virginia Berry, Commission on Civil Rights, 254-6661.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.

Accordingly, 5 CFR 213.3356(e) is amended as set out below:

§ 213.3356 Commission on Civil Rights.

* * * * *

(e) Two Special Assistants to the Staff Director.

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

[FR Doc. 79-34687 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Community Services Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The title of the position, Private Secretary to the Director, is changed to Private Secretary (Typing) to the Director because the new title more accurately describes the duties of the position.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.

On position content: Felix Gloden, Community Services Administration, 254–5220.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3373(a)(4) is amended as set out below:

§ 213.3373 Community Services Administration.

(a) *Office of the Director.* * * *

(4) One Confidential Secretary and one Private Secretary (Typing) to the Director.

* * * * *

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

[FR Doc. 79-34726 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Community Services Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Confidential Secretary (Steno) to the Inspector General because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 3, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.

On position content: Felix Gloden, CSA, 254–5222.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3373(b)(1) is added as set out below:

§ 213.3373 Community Services Administration.

* * * * *

(b) *Office of the Inspector General.* (1) One Confidential Secretary (Steno) to the Inspector General.

* * * * *

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

[FR Doc. 79-34727 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Community Services Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Executive Assistant to the Inspector General because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 16, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.

On position content: Felix Gloden, Community Services Administration, 254–5220.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3373(c)(1) is added as set out below:

§ 213.3373 Community Services Administration.

* * * * *

(c) *Office of the Inspector General.* (1) One Executive Assistant to the Inspector General.

* * * * *

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

[FR Doc. 79-34728 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C two temporary positions of Special Assistant to the Secretary, not to exceed November 2, 1979, because they are confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 2, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–4533.

On position content: Harold Morrison, Department of Housing and Urban Development, 202–755–5480.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384(a)(12) is amended as set out below:

§ 213.3384 Department of Housing and Urban Development.

(a) Office of the Secretary. * * *

(12) Three Special Assistants to the Secretary.

* * * * *

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

[FR Doc. 79-34729 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Urban Policy Specialist at the Department of Housing and Urban Development because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: April 20, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–4533.

On position content: G. Eleanor Coleman, Department of Housing and Urban Development, 202-755-5479.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384(d)(2) is added as set out below:

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(d) *Office of the Assistant Secretary for Community Planning and Development.* * * *

(2) One Urban Policy Specialist.

* * * * *

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

[FR Doc. 79-34730 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C one temporary position of Deputy Executive Assistant to the Secretary (Operations) not to exceed November 6, 1979 and one Secretary to the Executive Assistant to the Secretary (Operations) not to exceed November 6, 1979 because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 6, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202-632-4533.

On position content: Harold Morrison, Department of Housing and Urban Development, 202-755-5480.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384(a)(71) is amended as set out below:

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.* * * *

(71) One Secretary and one Secretary (Steno) to the Executive Assistant to the Secretary (Operations), two Deputy Executive Assistants to the Secretary (Operations) and six Special Assistants to the Secretary (Operations).

* * * * *

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

[FR Doc. 79-34731 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment changes the title of a position at the Department of Housing and Urban Development from Director, Executive Secretariat to Special Assistant to the Secretary for Executive Secretariat Operations because the new title more accurately describes the duties of the position and reflects the title of its current supervisor.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202-632-4533.

On position content: Linda Stevens, Department of Housing and Urban Development, 202-755-5479.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384(a)(3) is added and (m)(2) is revoked as set out below:

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.* * * *

(3) One Special Assistant to the Secretary for Executive Secretariat Operations.

* * * * *

(m) *Office of the Assistant Secretary for Administration.* * * *

(2) [Revoked].

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

[FR Doc. 79-34732 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one temporary Secretary to the Executive Assistant to the Secretary (Special Projects) and two Special Assistants to the Secretary (Special Projects), not to exceed November 6, 1979, because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 6, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202-632-4533.

On position content: Marvin Jackson, Department of Housing and Urban Development, 202-755-5480.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384(a)(70) is amended as set out below:

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.* * * *

(70) One Secretary (Steno) and one Secretary to the Executive Assistant to the Secretary (Special Projects) and six Special Assistants to the Secretary (Special Projects).

* * * * *

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

[FR Doc. 79-34733 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Special Assistant to the Assistant Secretary for Community Planning and Development because it is confidential in nature. Appointments may be made to these positions without examination.

EFFECTIVE DATE: June 22, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202-632-4533.

On position content: Eleanor Coleman, Housing and Urban Development, 202-755-5479.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384(d)(3) is amended as set out below:

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(d) *Office of the Assistant Secretary for Community Planning and Development.* * * *

(3) Five Special Assistants to the Assistant Secretary.

* * * * *

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

[FR Doc. 79-34734 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment to Schedule C changes the title of Private Secretary to the Deputy Assistant Secretary for Intergovernmental Relations to Private Secretary to the Deputy Assistant Secretary for Legislation and Intergovernmental Relations to more appropriately reflect the duties of the position and to reflect the current title of the superior. This amendment also excepts from the competitive service under Schedule C one Private Secretary to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATES: Title change—May 30, 1979; New Authority—June 5, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–4533.

On position content: Marvin Jackson, Department of Housing and Urban Development, 202–755–7844.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384(1)(8) is added and (m)(5) is amended as set out below:

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(1) *Office of the Assistant Secretary for Neighborhood Organizations, Voluntary Associations, and Consumer Protection.* * * *

(8) One Private Secretary to the Assistant Secretary.

* * * * *

(m) *Office of Legislation and Intergovernmental Relations.* * * *

(5) One Private Secretary to the Deputy Assistant Secretary for Legislation and Intergovernmental Relations.

* * * * *

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

[FR Doc. 79-34735 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Staff Assistant to the General Deputy Assistant Secretary for Community Planning and Development because it is confidential in nature. An appointment may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: June 6, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202–632–4533.

On position content: Eleanor Coleman, Department of Housing and Urban Development, 202–755–5479.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384(d)(2) is added as set out below:

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(d) *Office of the Assistant Secretary for Community Planning and Development.* * * *

(2) One Staff Assistant to the General Deputy Assistant Secretary.

* * * * *

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

[FR Doc. 79-34736 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Consumer Product Safety Commission

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The title of the position Staff Assistant to a Commissioner, is changed to Special Assistant to a Commissioner, because the new title more accurately describes the duties of the position.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.

On position content: Mary Czajkowski, Consumer Product Safety Commission, 492–6500.

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3360(b) is amended as set out below:

§ 213.3360 Consumer Product Safety Commission.

* * * * *

(b) Four Special Assistants and one Secretary (Steno) to a Commissioner.

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

[FR Doc. 79-34750 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Final Rule.

SUMMARY: Schedule A authority covering part-time, temporary and intermittent field enumeration staff in the Bureau of the Census is amended to: (1) specifically cover both recurring censuses and special surveys; (2) include economic as well as demographic censuses and surveys; and (3) revise and expand position coverage to include managers, supervisors, technicians, clerks, interviewers and enumerators. Positions covered by the amended authority are filled under the same conditions as those for which Schedule A exception was originally authorized, and examination for them continues to be impracticable.

EFFECTIVE DATE: May 3, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3114(d)(1) is amended as follows:

§ 213.3114 Department of Commerce.

* * * * *

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for temporary, part-time or intermittent employment in

connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature. *Provided,* that temporary, part-time employment will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

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

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-34756 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Equal Employment Opportunity Commission

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Congressional Liaison Assistant because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.

On position content: Marie Queen, Equal Employment Opportunity Commission, 634–7015.

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3377(d) is added as set out below:

§ 213.3377 Equal Employment Opportunity Commission.

* * * * *

(d) One Congressional Liaison Assistant.

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

[FR Doc. 79-34751 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Federal Maritime Commission

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Congressional Relations Officer because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: July 30, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.

On position content: William Herron, Federal Maritime Commission, 523–5773.

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3367(j) is added as set out below:

§ 213.3367 Federal Maritime Commission.

* * * * *

(j) One Congressional Relations Officer.

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

[FR Doc. 79-34752 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Small Business Administration

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Deputy Assistant Administrator for Public Communications and one Special Assistant to the Inspector General because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: Deputy Assistant Administrator—June 6, 1979; Special Assistant—June 11, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 632–4533.

On position content: Diane Jenkins, Small Business Administration, 653–6504.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3332(d) is amended and (k) is added as set out below:

§ 213.3332 Small Business Administration.

* * * * *

(d) One Confidential Assistant and Secretary and one Special Assistant to the Inspector General.

* * * * *

(k) One Deputy Assistant Administrator for Public Communications.

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

[FR Doc. 79-34753 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Justice

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Position at GS–15 and below on the staff of the Office of Special Counsel are excepted under Schedule A because it is impracticable to examine for them. This authority may be used for new appointments for a 2 year period unless extended, with prior Office approval for additional 1-year period(s).

EFFECTIVE DATE(S): May 4, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3110(e)(1) is added as follows:

§ 213.3110 Department of Justice.

* * * * *

(e) *Office of Special Counsel.* (1) Staff positions at GS–15 and below. New appointments may be made under this authority during a 2 year period, unless the authority is extended, with prior approval of the Office of Personnel Management, for additional period(s) not to exceed 1 year each.

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-34758 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Temporary Boards and Commissions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment revokes the Schedule A exception for the President's Commission on Pension Policy because the authority has been superseded by statutory appointing authority.

EFFECTIVE DATE: July 20, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, 202-632-4533.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3199(w)(1) is revoked as follows:

§ 213.3199 Temporary Boards and Commissions.

* * * * *

(w)(1) [Revoked]

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

[FR Doc. 79-34757 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; Temporary Boards and Commissions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Schedule A exception is authorized for all staff positions at grades GS-15 and below in temporary boards and commissions which are established by law or Executive order to perform specific projects and whose life, including any extensions, will not exceed 4 years. Schedule A exception is also authorized for temporary organizations within continuing agencies which are established by an authority outside the agency, usually law or Executive order, to perform work outside the agency's continuing responsibilities; this Schedule A exception is applicable only to positions for which other staffing resources or authorities are not available within the agency. To reflect expanded coverage of Schedule A § 213.3199, the headnote of the section is changed from Temporary Boards and Commissions to Temporary Organizations. Schedule A exception is appropriate for all organizations meeting the conditions prescribed in these authorities because the urgency of their staffing needs makes examinations impracticable.

EFFECTIVE DATE: May 31, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3199 is amended by changing the headnote to Temporary Organizations and by adding paragraphs (a) and (b), as follows:

§ 213.3199 Temporary organizations.

(a) Positions at GS-15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s) does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS-15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-34755 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; National Foundation on the Arts and the Humanities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Special Counsel for Arts and Education to the Chairman, National Endowment for the Arts because they are confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: May 2, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202-632-4533.

On position content: Bob Bowlin, National Foundation on the Arts and the Humanities, 202-632-4853.

Office of Personnel Managment.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3382(d) is added as set out below:

§ 213.3382 National Foundation on the Arts and the Humanities.

* * * * *

(d) One Special Counsel for Arts and Education to the Chairman, National Endowment for the Arts.

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

[FR Doc. 79-34760 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 213

Excepted Service; U.S. Metric Board

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one Congressional Relations Officer in the U.S. Metric Board because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: May 4, 1979.

FOR FURTHER INFORMATION CONTACT:

On position authority: William Bohling, Office of Personnel Management, 202-632-4533.

On position content: Cassandra Browner, U.S. Metric Board, 202-566-1790.

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3383(b) is added as set out below:

§ 213.3383 U.S. Metric Board.

* * * * *

(b) One Congressional Relations Officer.

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

[FR Doc. 79-34759 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of Housing and Urban Development

AGENCY: Office of Personnel Management.
ACTION: Final rule.

SUMMARY: This amendment excepts two positions from the competitive service under Schedule C because the positions are confidential in nature. One position is Special Assistant to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity; the other is Director, Office of Non-Governmental Entities. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: Special Assistant—June 15, 1979; Director—June 19, 1979.

FOR FURTHER INFORMATION CONTACT: On position authority: William Bohling, Office of Personnel Management, 202-632-4533.

On position content: Eleanor Coleman, Department of Housing and Urban Development, 202-755-5479.

Office of Personnel Managment.

Beverly M. Jones,

Issuance System Manager.

Accordingly, 5 CFR 213.3384 (f)(2) and (l)(9) are added as set out below:

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(f) *Office of the Assistant Secretary for Fair Housing and Equal Opportunity.* * * *

(2) One Special Assistant to the General Deputy Assistant Secretary.

* * * * *

(l) *Office of the Assistant Secretary for Neighborhood Organizations Voluntary Associations, and Consumer Protection.* * * *

(9) Director, Office of Non-Governmental Entities.

* * * * *

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

[FR Doc. 79-34829 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Parts 293 and 297

Personnel Records and Files; Protection of Privacy in Personnel Records.

AGENCY: Office of Personnel Management.
ACTION: Final rule.

SUMMARY: The purpose of this notice is to announce adoption of final rules that are necessary as a result of the creation of the Office of Personnel Management under the President's Reorganization Plan No 2, and the Privacy Act of 1974. These regulations identify the Office, rather than the former Civil Service Commission, as being responsible for personnel recordkeeping practices and policies, as well as the placing of requirements on agencies for maintenance of personnel records to insure protection of personal rights, privileges, benefits, and privacy.

EFFECTIVE DATE: December 10, 1979.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, Work Force Records Management Branch, Agency Compliance and Evaluation, (202) 254-9778.

SUPPLEMENTARY INFORMATION: The Office published in the Federal Register of May 29, 1979 (44 FR 30820), the proposed new 5 CFR Parts 293 and 297. This notice provided for a full 60-day comment period which ended July 30, 1979. During the comment period, the Office received comments from a total of six agencies and three labor unions on the proposed regulations.

General Comments

Several comments indicated that Office enforcement of agency compliance with the regulations was as essential as the issuance of the regulations themselves, a position with which the Office agrees. The Office also received one comment about the length of the Part 297 regulation and, while we recognize this, our experience has indicated that individuals and agencies are better served with the greater detail provided. Moreover, the Office frequently furnishes informational copies of Subparts B and C of Part 297 of OPM's regulations to groups and individuals. These two subparts, when read together, inform the requester and agencies of their responsibilities and provide the requester with information concerning the response to be expected.

The Office received two comments suggesting that the regulations, either in Part 293 or Part 297, identify exactly what records are covered by OPM's systems and what records agencies are responsible for under agency internal systems. The Office recognizes the benefit such information affords to agencies and individuals, but does not believe that such specificity is appropriate in regulations. Our experience has indicated that new programs and changes to existing programs will often result in creation of new record systems, substantial alterations to existing record systems, or the elimination of record systems. If the regulations were to contain specific lists of records, the regulations would have to be continually revised to accommodate these changes. The Office believes that these benefits are achieved by the published notices of systems of records (44 FR 30836 et seq., May 29, 1979), which clearly identify records agencies maintain which are covered by OPM's systems notices. Questions regarding the coverage of records that agencies or individuals have may be referred to the appropriate system manager listed in the notice.

Suggestions Not Adopted

The comments received that did not result in changes to the regulations, and the reasons for not adopting the suggested changes, are as follows:

a. Two suggested changes to § 293.108(c) concerned disciplinary action against an employee who: (1) Knowingly violates the regulations either by disclosing records when not authorized to do so, whether or not the employee's action constitutes a possible violation of the Privacy Act as well; and (2) uses for his/her personal benefit information that is in the public domain but was obtained during performance of the employee's duties. As to the first suggestion, the Office does not believe the use of the term "knowing" in § 293.108(c) refers only to possible violations of the Privacy Act; the regulation as written would permit disciplinary action whenever the employee knowingly violates the regulations or executes any other unauthorized releases. In the latter case, the Office does not believe it has the authority to say that Federal employees may not use information, considered to be in the public domain, for personal benefit.

b. There were suggested changes to § 297.204 that would provide for withholding of documents relating to intra-management communication (e.g., recommended action not yet approved), and for waiver of any fee on the basis of a decision that release is in the public interest. The Office has published exemptions for certain of its Government-wide systems of records. Where such exemptions have not been published, records from these systems are not exempt from access under the Privacy Act. Section 552a(q) of the Privacy Act prohibits the claiming of a Freedom of Information Act exemption (e.g., Intra-Agency Communications, Section 552(b)(5)) to deny access to records sought under the Privacy Act. Therefore, requests for access to records retained in an OPM Government-wide system of records, where no exemptions have been promulgated, must be granted. An exception to this may occur where the information involved was

compiled in reasonable anticipation of a civil action or procedure under subsection (d)(5). The waiver of a fee in cases where disclosure is arguably in the public interest is a Freedom of Information Act requirement and does not apply to Privacy Act regulations.

c. There was a suggested change to §§ 297.203(a), 297.208(a), and 297.214(a) that would specifically direct the requester to submit requests to either the system manager or designee or to an agency personnel office. The Office has published in each of its Government-wide system notices procedures whereby an individual is directed to contact the system manager, an OPM regional office, or the agency personnel office when seeking access to or amendment of a record. Since the Government-wide systems are the only records controlled by OPM where current employees are to go to their employing agencies for access, the reference to contact the system manager or designee, as shown in the Federal Register notice (§ 297.203(a)), does direct the requester to his/her agency or to OPM as appropriate.

d. There was a suggested change to §§ 297.206 and 297.210 that would permit agencies to provide for an internal appeal when the agency system manager denies a request for access to or amendment of records. The Office believes that the Privacy Act clearly intended expeditious action in granting access, deciding on amendment requests, and processing appeals of any denials. The requirement for these denials to be appealed only once, to the agency responsible for issuing the instructions under which the records are maintained (i.e., OPM for its Government-wide systems), is designed to provide for expeditious processing of a Privacy Act matter. Therefore, this suggested change is not adopted. However, this requirement does not preclude an agency system manager from seeking counsel within the agency (as determined by agency procedures) before issuing the official agency decision regarding a request for access to or amendment of a record.

e. There was a suggested change to § 297.205(b)(2) that would clarify the provision which allows denial of access when the record is information compiled in anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)). This suggestion is not adopted because § 297.205(b)(2) cites the exact language of the Act and has the same meaning here as it does in the Act. These situations may vary from case to case and decisions must, therefore, be made on a case by case basis.

f. One comment suggested that § 297.204(a)(3) be changed to indicate that a requester may receive a certified copy of the record. The Office disagrees on the basis that the use of the term "generally" provides for the system manager to decide whether a certified copy of the records is appropriate.

g. One comment suggested that § 297.214 be revised to encompass requirements about accounting of "mass" disclosures, i.e., disclosures of data about large numbers of individuals to Treasury or the Office for pay or enrollment in health benefit programs, respectively. The Office disagrees that such policy matters are appropriate for regulatory issuances. A statement of OPM's policy regarding methodology of accounting of such disclosures is more appropriate in the Federal Personnel Manual issuance system.

h. One comment suggested that the Office's exemptions as claimed in § 297.304 imply that an employment application could be exempt under provisions of 5 U.S.C. 552a(k)(6). The Office disagrees as the exemptions promulgated clearly state that only those records in the system of records that meet the definition of exempt records in the Act may be exempt. Other records in the same system, by implication, will therefore be furnished.

i. One comment suggested that the requirement in § 297.505 that agencies shall consult with counsel when an agency official is served with a subpoena is too burdensome to small offices. The Office believes that discussion of a subpoena with counsel affords greater protection and benefit for the agencies. Since a bona fide subpoena cannot be ignored and must be responded to, it is believed that by requiring the agency official to consult legal counsel prior to disclosing records, counsel will be able to help determine if the subpoena is valid and whether the records requested are pertinent to the legal proceeding. While OPM is aware that some offices are small and do not have legal counsel, the alternative to this regulation would be to disclose all records requested, some of which should legitimately be withheld.

Suggestions Adopted

The following suggestions have been adopted. In some cases the language furnished in the comments was used while in others the revisions suggested to the proposed section were accommodated by altering the proposed language:

a. A comment on § 293.104 suggested that the use of the term "where feasible" seemingly goes beyond the intent of the Act which uses the term "to the greatest extent possible" when discussing collection of data directly from the individual. The Office agrees and has adopted the language of the Act in this regard. (See § 293.104(a) below.)

b. A comment on § 293.105(b)(2) suggested that the requirement precluding penalties for individuals who refuse to provide their Social Security Number is seemingly not consistent with § 293.105(b)(1). The Office agrees and has adopted the clarifying language suggested by the comnment. (See § 293.105(b)(2) below.)

c. A comment on § 293.302 suggested that the use of the term "generally" is too broad, provides inadequate control, and allows the establishment of more than one Official Personnel Folder (OPF) for an employee. The Office agrees and has modified this section to state that only under OPM's instructions can more than one OPF exist for an employee. (See § 293.302 below.)

d. A comment on § 297.201(c) suggested that it is not clear, when documents (e.g., a driver's license, identify card, or passport) are to be used as a means of identifying a requester, whether they are to be presented in person or copies to be mailed. The Office agrees and has adopted clarifying language. Additionally, the clarifying language also provides for visual identification of the requester (by sight and signature) as was suggested in another comment. (See § 297.291(c) below.)

e. A comment on § 297.201(g) suggested that the language used implied that access to a record would not be provided if the requester failed to furnish "all" the proper identification. While the Office disagrees with this position, since the statement says "all or any part" (clearly indicating that the requester need only furnish such information as is necessary rather than all information), the Office has adopted some clarifying language changes that state why the information is necessary. (See § 297.204(g) below.)

f. Comments on § 297.204(b) suggested that the language used meant that in some cases the Office or agency would not permit the requester to examine original records, contrary to the Act's intent. The Office agrees and has adopted changes to the language. (See § 297.204(b) below.)

g. A comment on § 297.294(c)(2) suggested that since the Act provided for special handling procedures only for medical records, the discussion of special handling procedures for examination and related material was inappropriate. The Office agrees and has not adopted § 297.294(c)(2). (See § 297.204(c) below.)

h. A comment on those sections of Part 297 that describe time limits for responses suggested that the time limit for furnishing a decision on a request for *review* of a denial for access to or amendment of records be reduced from 30 to 20 working days. The Office disagrees because the Act provides no right of appeal for denial of access and, regarding the right of appeal for denial of amendment, states "30 days (excluding Saturdays, Sundays, and legal public holidays)", which means 30 working days. However, the Office considers the point concerning the timely response to requests to be well made with regard to §§ 297.209(b), 303(a), and 306(b) where a 30 working day time frame was proposed for furnishing a decision on a request for access or amendment and has changed this to 20 working days. (See §§ 297.209(b), 303(a), and 306(b) below.)

i. Comments on § 297.212(a) suggested that the language regarding fees be changed to make it clear that the fee levied is for copying the records, that agencies may use their own established fees, and that checks are made payable to the agency processing the request. The Office agrees and has made the appropriate language changes. (See § 297.212 below.)

j. A comment on § 297.214(c) suggested that the requirement that a response to a request for the accounting of disclosures made of records must include a statement about disclosures to law enforcement agencies made under provisions of 5 U.S.C. 552a(b)(7) negates the purposes intended when the Act (5 U.S.C. 552a(c)(3)) exempted such accountings from disclosure to a requester. The Office agrees and has adopted appropriate changes in this section. (See § 297.214(c) below.)

k. A comment on § 297.504(a) suggested that the term "administrative body of competent jurisdiction" was beyond the intent of the Act when it refers to a "court of competent jurisdiction". The Office agrees and this change has been made. (See § 297.504(a) below.)

In addition to changes specified above, some other changes were also necessary as a result of internal comments, additions or deletions of OPM systems of records, or as a result of significant errors in publication.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly 5 CFR is amended by replacing Parts 293 and 297 with revised Parts 293 and 297 which appear below.

PART 293—PERSONNEL RECORDS

Subpart A—Basic Policies on Maintenance of Personnel Records

Sec.
293.101 Purpose and scope.
293.102 Definitions.
293.103 Recordkeeping standards.
293.104 Collection of information.
293.105 Restrictions on collection and use of information.
293.106 Safeguarding information about individuals.
293.107 Special safeguards for automated records.
293.108 Rules of conduct.

Subpart B—Personnel Records Subject to the Privacy Act

293.201 Purpose.
293.202 Records subject to Office or agency Privacy Act regulations.
293.203 Review of Office or agency practices.

Subpart C—Official Personnel Folder

293.301 Applicability of regulations.
293.302 Establishment of official personnel folder.
293.303 Ownership of folder.
293.304 Maintenance and content of folder.
293.305 Type of folder to be used.
293.306 Use of existing folders upon transfer or reemployment.
293.307 Disposition of folders of former Federal employees.
293.308 Removal of temporary records from folders.

Authority: 5 U.S.C. 552a; Executive Order 12107, (December 28, 1978), 5 U.S.C. 1302. 3 CFR 1954–1958 Compilation; 5 CFR 7.2; Executive Order 9830, 3 CFR 1943–1948 Compilation.

Subpart A—Basic Policies on Maintenance of Personnel Records

§ 293.101 Purpose and scope.

(a) This subpart sets forth basic policies governing the creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records which the Office of Personnel Management requires agencies to maintain in the personnel management or personnel policy setting process.

(b) Agencies in the Executive Branch of the Federal Government are subject to specific Office of Personnel Management recordkeeping requirements to varying degrees, pursuant to statute, Office regulation, or formal agreements between the Office and agencies. This subpart applies to any department or independent establishment in the Executive Branch of the Federal Government, including a government corporation or Government controlled corporation, except those specifically excluded from Office recordkeeping requirements by statute, Office regulation, or formal agreement between the Office and that agency.

§ 293.102 Definitions.

In this part:

"Agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the Executive Branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"Data subject" means the individual about whom the Office or agency is maintaining information in a system of records;

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

"Information" means papers, records, photographs, magnetic storage media, micro storage media, and other documentary materials regardless of physical form or characteristics, containing data about an individual and required by the Office in pursuance of law or in connection with the discharge of official business, as defined by statute, regulation, or administrative procedure;

"Maintain" includes collect, use, or disseminate;

"Office" means the Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained an used in the personnel management or personnel policysetting process. (For purposes of this part, this term is not limited just to those personnel records in a system of records and subject to the Privacy Act);

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, criminal history, or employment history;

"System of records" means a group of records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 293.103 Recordkeeping standards.

(a) The head of each agency shall ensure that persons having access to or involved in the creation, development, processing, use, or maintenance of personnel records are informed of pertinent recordkeeping regulations and requirements of the Office of Personnel Management and the agency. Authority to maintain personnel records does not constitute authority to maintain

information in the record merely because it may be useful; both Government-wide and internal agency personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish the Federal personnel management purposes required by statute, Executive order, or Office regulation.

(b) The Office is responsible for establishing minimum standards of accuracy, relevancy, necessity, timeliness, and completeness for personnel records it requires agencies to maintain. These standards are discussed in appropriate chapters of the Federal Personnel Manual. Before approval of any agency requests for changes in recordkeeping practices governed by the Federal Personnel Manual, the Office will examine the proposal or request in the context of such standards set forth by the agency in support of the proposal and in light of the personnel program area that requires these records.

§ 293.104 Collection of information.

(a) Any information in personnel records whether or not those records are in a system of records, used in whole or in part in making a determination about an individual's rights, benefits, or privileges under Federal personnel programs should, to the greatest extent practicable, be collected directly from the individual concerned. Factors to be considered in determining whether to collect the data from the individual concerned or a third party are when:

(1) The nature of the information is such that it can only be obtained from another party;

(2) The cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from another party;

(3) There is virtually no risk that information collected from other parties, if inaccurate, could result in a determination adverse to the individual concerned;

(4) The information supplied by an individual must be verified by another party; or

(5) There are provisions made, to the greatest extent practicable, to vertify information collected from another party with the individual concerned.

§ 293.105 Restrictions on collection and use of information.

(a) First Amendment. Personnel records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless expressly authorized by statute, or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. These rights include, but are not limited to, free exercise of religious and political beliefs, freedom of speech and the press, and freedom to assemble and to petition the government.

(b) Social Security Number.

(1) Agencies may not require individuals to disclose their Social Security Number unless disclosure would be required;

(i) Under Federal statute; or

(ii) Under any statute, Executive order, or regulation that authorizes any Federal, State, or local agency maintaining a system of records that was in existence and operating prior to January 1, 1975, to request the Social Security Number as a necessary means of verifying the identity of an individual.

(2) Individuals asked to voluntarily (circumstances not covered by paragraph (b)(1) of this section) provide their Social Security Number shall suffer no penalty or denial of benefits for refusing to provide it.

§ 293.106 Safeguarding information about individuals.

(a) To ensure the security and confidentiality of personnel records, in whatever form, each agency shall establish administrative, technical, and physical controls to protect information in personnel records from unauthorized access, use, modification, destruction, or disclosure. As a minimum, these controls shall require that all persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access.

(b) Personnel records must be stored in metal filing cabinets which are locked when the records are not in use, or in a secured room. Alternative storage facilities may be employed provided they furnish an equivalent or greater degree of security than these methods. Except for access by the data subject, only employees whose official duties require access shall be allowed to handle and use personnel records, in whatever form or media the records might appear. To the extent feasible, entry into personnel record storage areas shall be similarly limited. Documentation of the removal of records from storage areas must be kept so that adequate control procedures can be established to assure that removed records are returned on a timely basis.

(c) Disposal and destruction of personnel records shall be in accordance with the General Record Schedule issued by the General Services Administration for the records or, alternatively, with Office or agency records control schedules approved by the National Archives and Records Service of the General Services Administration.

§ 293.107 Special safeguards for automated records.

(a) In addition to following the security requirements of § 293.106 of this part, managers of automated personnel records shall establish administrative, technical, physical, and security safeguards for data about individuals in automated records, including input and output documents, reports, punched cards, magnetic tapes, disks, and on-line computer storage. The safeguards must be in writing to comply with the standards on automated data processing physical security issued by the National Bureau of Standards, U.S. Department of Commerce, and, as a minimum, must be sufficient to:

(1) Prevent careless, accidental, or unintentional disclosure, modification, or destruction of identifiable personal data;

(2) Minimize the risk that skilled technicians or knowledgeable persons could improperly obtain access to, modify, or destroy identifiable personnel data;

(3) Prevent casual entry by unskilled persons who have no official reason for access to such data;

(4) Minimize the risk of an unauthorized disclosure where use is made of identifiable personal data in testing of computer programs;

(5) Control the flow of data into, through, and from agency computer operations;

(6) Adequately protect identifiable data from environmental hazards and unneccessary exposure; and

(7) Assure adequate internal audit procedures to comply with these procedures.

(b) The disposal of identifiable personal data in automated files is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media such as magnetic tapes and disks must be erased prior to release of the media for reuse.

§ 293.108 Rules of conduct.

(a) Scope. These rules of conduct apply to all Office and agency

employees responsible for creation, development, maintenance, processing, use, dissemination, and safeguarding of personnel records. The Office and agencies shall require that such employees are familiar with these and appropriate supplemental agency internal regulations.

(b) Standards of Conduct. Office and agency employees whose official duties involve personnel records shall be sensitive to individual rights to personal privacy and shall not disclose information from any personnel record unless disclosure is part of their official duties or required by executive order, regulation, or statute (e.g., required by the Freedom of Information Act, 5 U.S.C. 552).

(c) Improper uses of personnel information. Any Office or agency employee who makes a disclosure of personnel records knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulation, shall be subject to disciplinary action and may also be subject to criminal penalties where the records are subject to the Privacy Act (5 U.S.C. 552a). Employees are prohibited from using personnel information not available to the public, gained through official duties, for commercial solicitation or sale, or for personal gain.

Subpart B—Personnel Records Subject to the Privacy Act

§ 293.201 Purpose.

The purpose of this subpart is to set forth the criteria to be used to determine when personnel records on individuals are subject both to the regulations contained in this part and to Office or agency regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. When personnel records are maintained within a system of records, the records are deemed to be within the scope of both the regulations in this part and Office or agency regulations implementing the Privacy Act.

§ 293.202 Records subject to Office or agency Privacy Act regulations.

When the Office of Personnel Management publishes in the Federal Register a notice of system of records for personnel records which are maintained by the agencies or by the Office, that system of records will be subject to the regulations in this part and also to the regulations in part 297 of this chapter. When agencies publish a notice of system of records for personnel records required by the Office that are not included in the Office's notices, those agency systems of records will be subject both to the regulations contained in this part and to agency promulgated regulations that implement the Privacy Act.

§ 293.203 Review of Office or agency practices.

Reviews of agency personnel management policies and practices will be conducted to insure compliance with Office regulations. The Office may direct agencies to take whatever corrective action is necessary. Office or agency officials who have knowledge of violations of these regulations shall take whatever corrective action is necessary. Agencies shall list officials of the Office of Personnel Management as a routine user for personnel records to assist the Office in its oversight responsibilities.

Subpart C—Official Personnel Folder

§ 293.301 Applicability of regulations.

This subpart applies to, and within this subpart "agency" means, except those specifically excluded from Office recordkeeping requirements by statute, Office regulation or formal agreement between the Office and the agency, each executive department and independent establishment of the Federal Government, each corporation wholly owned or controlled by the United States, and with respect to positions subject to civil service rules and regulations, the legislative and judicial branches of the Federal Government and the District of Columbia Government.

§ 293.302 Establishment of Official Personnel Folder.

Each agency shall establish an Official Personnel Folder for each employee occupying a position subject to this part, except as provided in §293.306. Except as provided for in Federal Personnel Manual Supplement 293–31, there will be only one Official Personnel Folder maintained for each employee.

§ 293.303 Ownership of folder.

The Official Personnel Folder of each employee in a position subject to civil service rules and regulations is under the jurisdiction and control of, and is part of the records of, the Office of Personnel Management.

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. The folder shall also contain permanent records affecting the employee's status and service as required by the Office's instructions and as designated in FPM Supplement 293–31.

§ 293.305 Type of folder to be used.

Each agency shall use only Official Personnel Folders from Federal Supply Service contracts or stock for the folders required by this part.

§ 293.306 Use of existing folders upon transfer or reemployment.

When an agency hires a person who has served on or after April 1, 1947, in a position subject to this part, it shall request the transfer of the Official Personnel Folder pertaining to the person's employment. The folder so obtained shall be used in lieu of establishing a new Official Personnel Folder.

(a) When a person for whom an Official Personnel Folder has been established transfers from one agency to another, the last employing (losing) agency shall, on request, transfer the folder to the new employing agency.

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder; and

(2) Ensure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293–31.

§ 293.307 Disposition of folders of former Federal employees.

(a) Folders of persons separated from employment must be retained by the losing agency for thirty days after separation, and may be retained for an additional sixty days. Thereafter, the folder should be transferred to the General Services Administration, National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118.

(b) When a former Federal employee is reappointed in the Federal service, the National Personnel Records Center (Civilian) shall, upon request, transfer the folder to the new employing agency.

§ 293.308 Removal of temporary records from folders.

The employing agency having possession of an Official Personnel Folder shall remove temporary records from the folder before it is transferred to another agency in accordance with General Schedule 1 promulgated by the General Services Administration.

PART 297—PROTECTION OF PRIVACY AND PERSONNEL RECORDS

Subpart A—General Provisions

Sec.
297.101 Purpose and scope.
297.102 Definitions.
297.103 Designations of authority by system manager.

Subpart B—Individual Rights Regarding Access, Amendment, and Disclosure

297.201 Identification requirements for specific inquiries and requests for access.
297.202 Inquiries.
297.203 Request for access to personnel records.
297.204 Methods of access.
297.205 Denials of access requests.
297.206 Request for administrative review of denial of access.
297.207 Judicial review.
297.208 Request for amendment of records.
297.209 Response to request for amendment of records.
297.210 Request for administrative review of denial of an amendment.
297.211 Judicial review.
297.212 Fees.
297.213 Disclosures generally prohibited.
297.214 Request for accounting of disclosures.

Subpart C—Agency Responsibilities for Processing Privacy Act Requests

297.301 Responsibilities.
297.302 Verification of identity of requester.
297.303 Response to access requests.
297.304 Exempt records.
297.305 Response to request for administrative review of denial of access.
297.306 Request for correction/amendment.
297.307 Basis for denials of request for amendments.
297.308 Response to request for administrative review of denial of request for amendment.

Subpart D—Requirements for Recordkeeping Under the Privacy Act

297.401 Responsibility for systems of records.
297.402 Responsibility for litigation concerning the regulations.
297.403 Publication of annual notices.
297.404 Reports on changes to systems of records.
297.405 Penalties.
297.406 Changing or adding routine uses.
297.407 Providing Privacy Act Statements.
297.408 Annual reports.
297.409 Annual notice to employees.

Subpart E—Disclosures From Systems of Records

297.501 Restrictions on disclosure of a deceased data subject's record.
297.502 General written consent requirement.
297.503 Disclosures permitted without prior written consent of the data subject.
297.504 Disclosure pursuant to compulsory legal process.
297.505 Disclosure pursuant to a subpoena.
297.506 Accounting of disclosure.
297.507 Penalties.

Authority: Sec. 3, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

Subpart A—General Provisions

§ 297.101 Purpose and scope.

(a) These regulations implement the provisions of Pub. L. 93-579, the Privacy Act of 1974 (5 U.S.C. 552a). The regulations govern the types of systems of personnel records listed below and which are more thoroughly identified in the annual publication of the Office's notices of systems of records.

(1) Internal systems of personnel records established and maintained by the Office of Personnel Management (OPM) solely on its own employees and which are under its physical control.

(2) Centralized systems of personnel records physically established and maintained by the Office of Personnel Management on most current and former Federal employees and some applicants for Federal employment.

(3) Government-wide systems of personnel records that are maintained by agencies on their employees or on applicants for employment for the Office of Personnel Management and which are in the physical custody of agencies. Though such records are in the physical custody of agencies, the Office of Personnel Management has retained authority under the Privacy Act to make reviews of initial agency determinations regarding access to and amendment of records in these systems.

(b) For the purposes of this part, the term "agency" applies to any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation or Government controlled corporation, except those specifically excluded from Office of Personnel Management recordkeeping requirements by statute, Office of Personnel Management regulation, or formal agreement between the Office of Personnel Management and that agency.

§ 297.102 Definitions.

For the purpose of this part, the terms used herein have the same meanings as defined in the Privacy Act, 5 U.S.C. 552a. In addition:

"Access" means providing a copy of a record to, or allowing review of the original record by the data subject or the data subject's authorized representative, parent, or legal guardian;

"Act" means the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a;

"Amendment" includes correction, addition, deletion, or destruction of the record or specific portions thereof;

"Annual Report" means that report required to be submitted by each Federal agency to the Office of Management and Budget by April 30th of each year identifying its activities under the Privacy Act for the preceding calendar year;

"Data subject" means the individual to whom the information pertains and by whose name or other individual identifier the information is retrieved;

"Disclosure" means providing personal review of a record, or a copy thereof, to someone other than the data subject, the data subject's authorized representative, parent, or legal guardian;

"Notice of system of records" means the notice, published in the Federal Register, of the existence and character of every system of record, hereinafter referred to as system notice;

"Office" means the Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained and used in the personnel management or personnel policy-making process; and

"System Manager" means the agency official, designated by the head of the agency, who has the authority to decide Privacy Act matters relative to each system of records maintained by agency.

§ 297.103 Designations of authority by system manager.

The responsible Office or agency system manager having jurisdiction over a system of records may designate in writing an agency employee either at the agency's headquarters or field office to evaluate and issue the agency decision on Privacy Act matters relating to the system of records. The designee should have ready access to the record involved, and be knowledgeable in all matters concerning what comprises the system of records and the basis for deciding Privacy Act issues.

Subpart B—Individual Rights Regarding Access, Amendment, and Disclosure

§ 297.201 Identification requirements for specific inquiries and requests for access.

(a) Unless the information sought is required to be released under the Freedom of Information Act or other statute, the Office or agency shall require proof of identity from a requester, and reserves the right to determine the adequacy of any such proof of identity before responding to a specific inquiry or request for access to a record in a system of records. The general identifying information items that a system manager may ask to be

furnished before a specific inquiry or request for access is granted include:

(1) Full name, signature, and home address;

(2) Date and place of birth;

(3) The current or last place and dates of Federal employment, if appropriate; and

(4) Social Security Number (for systems of records retrieved by this identifier).

(b) A request/inquiry from someone other than the data subject shall contain copies of any documents that establish the relationship or authorize access as follows:

(1) Where the requester is the parent or legal guardian of a data subject who is a minor, the requester shall identify the relationship with the data subject and furnish a certified or authenticated (e.g. notarized) copy of any document establishing parentage or appointment as legal guardian;

(2) Where the requester is the legal guardian of a data subject who has been declared incompetent by the courts, the requester shall identify the relationship with the data subject and furnish a certified or authenticated copy of the court's appointment of guardianship;

(3) Where the requester is a representative of the data subject, the requester shall identify the relationship with the data subject or the data subject's parent or legal guardian, and furnish documentation designating the representative as having the authority to act on behalf of the data subject.

(c) When the requester appears in person and cannot be identified by sight and signature, proof of identify is required as follows:

(1) When a request is from the data subject, the means of proof, in order of preference, are:

(i) A document bearing the individual's photograph and signature (for example, driver's license, passport, or military or civilian identification card); or

(ii) Two documents bearing the individual's signature (for example, medicare card, unemployment insurance book, employer identification card, national credit card, professional, craft, or union membership card);

(2) When a request is made by the parent, legal guardian, or authorized representative of the data subject, the means of identifying the requester and his or her authority for acting on behalf of the data subject, shall be as prescribed in paragraphs (b) and (c) of this section. In addition, the requester shall establish the identity of the data subject in the manner prescribed in paragraph (a) of this section.

(d) When a written inquiry or request is received from the data subject, or from the data subject's parent, legal guardian, or authorized representative, it should be signed and

(1) For an inquiry, contain sufficient identifying information about the data subject to permit searching of the record system(s) and to permit response and

(2) For a request:

(i) From the data subject, contain sufficient information to locate the record and establish that the requester and the data subject are the same (e.g. matching signatures); or

(ii) From the data subject's parent, legal guardian, or authorized representative, contain sufficient information to locate the record, match identity with the data subject, and such documentation of association or authorization as is prescribed in paragraph (b) of this section.

(e) The signed request from the data subject, or from the data subject's parent, legal guardian, or authorized representative specified in paragraph (d) of this section shall be sufficient proof of identity of the requester, unless for good cause the system manager or designee determines that there is a need to require some notarized or certified evidence of the identity of the requester.

(f) The system manager or designee may modify the type of proof of identity required and the method by which it is provided, on a case-by-case basis and within the limits prescribed in paragraphs (a), (b), and (c) of this section.

(g) In compliance with 5 U.S.C. 552a(e)(3), each requester that is asked to supply the information, orally or in writing, in accordance with this section shall be furnished the following information:

(1) 5 U.S.C. 552a authorizes solicitation of the information, disclosure is voluntary, and no penalty is attached for failure to provide the information;

(2) This information will be used to process the inquiry or request under the Act and for any other actions that may arise under the Act regarding the specific inquiry or request; and

(3) The effects of not providing all or any part of the information may be to render impossible or to delay the Office's or the agency's ability to locate and identify the records necessary to the processing of and action on the inquiry/request.

(h) When provisions of this section are alleged to have the effect of impeding an individual in exercising rights of access, the Office or the agency will consider from the individual making the request, alternative suggestions regarding proof of identity and authority for access to records.

§ 297.202 Inquiries.

(a) General. Inquiries about the Act or this part may be made in person or by mail at any OPM or agency office. A list of OPM regional and area offices is included in the appendix to the notice of OPM systems of records published annually in the Federal Register. A general inquiry would be a request for assistance in identifying which systems of records may contain a record about the individual. A requester is not required to submit identifying information in support of this type of inquiry.

(b) Specific. An inquiry that requests OPM or any agency to determine if it has, in a given system of records, a record about the inquirer, should be addressed to the official identified in the Notification procedures paragraph of the Federal Register notice for the system. Inquirers should specify the name of the system of records, if known, as published in the Federal Register and inquiries submitted by mail should contain the words "Privacy Act Inquiry" on the face of the envelope and the letter. Such inquiries should contain the identifying data prescribed in § 297.201 of this subpart before a search can be made of that particular system of records.

§ 297.203 Requests for access to personnel records.

(a) A data subject shall be granted access to the data subject's own records upon request, except where denial is authorized under § 297.205(b) of this subpart. To request access, the individual should contact the appropriate system managers (or designees) indicated in the OPM's notices of system of records published in the Federal Register. Requests may be made in person or by mail. Requests should specify the name of the system of records, if known, as published in the Federal Register. Requests submitted by mail should contain the words "Privacy Act Request" on the face of the envelope and the letter. All individuals requesting access to records must meet the identification requirements set forth in section 297.201 of this subpart. Agencies may provide forms to facilitate the servicing of requests under the Act.

(b) When an individual cites the Freedom of Information Act (5 U.S.C. 552) or request records about himself or herself which are contained in a Privacy Act system of records, the request will be processed under the Privacy Act. However, no Privacy Act exemption will be cited to deny access to a record

which would otherwise be available under the Freedom of Information Act.

§ 297.204 Methods of access.

(a) The following are the methods for allowing access to records when such access has been granted by a system manager or designee:

(1) Inspection in person may be made in the office designated in the system notice during the hours specified by the OPM or the agency; or

(2) Records may be transferred, at the determination of the agency or OPM, to an agency or OPM office or other Federal facility more convenient to the data subject for review; or

(3) Generally, agency and OPM offices will not furnish certified copies of records. Where copies of records are to be furnished, they may be mailed at the request of the data subject or, as determined by the agency or OPM, only after payment of any fee levied in accordance with § 297.212 is received.

(b) Where the requester seeks to obtain original documents, the Office or agency reserves the right to limit the request to copies of the original records. In no event shall original records be made available for review by an individual except in the presence of the system manager or designee. Title 18 U.S.C. 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or attempt to do any of the foregoing.

(c) Special procedures may be applied when processing requests for medical records where the records contain information about medical conditions of such a nature that a prudent physician would hestitate to inform a person suffering from those conditions of their exact nature or probable outcome. If the procedures are to be applied, it shall be required that the information sought be released only to a licensed physician designated in writing for that purpose by the data subject or the data subject's authorized representative, parent, or legal guardian.

(d) During access, the OPM or agency official shall supply necessary information and assistance to the data subject. The OPM or agency official shall furnish intelligible copies of any releasable information for which the data subject requests copies (in accordance with § 297.212.

(e) The data subject, or the data subject's parent, legal guardian, or authorized representative may be accompanied by someone of his or her choice during personal access and shall authorize the presence of the accompanying individual in a signed and dated statement containing the name of the accompanying individual and a specific description of the record to which access is sought. Neither the data subject nor his or her representative shall be required to justify the decision to be accompanied during access to a record. Access in this instance includes discussion of the record in the presence of the accompanying individual.

§ 297.205 Denials of access requests.

(a) If an access request is denied, the system manager or designee shall give the requester the following information:

(1) The system manager's or designee's name, position title, and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate sections of the Act and this part; and

(4) The individual's opportunities for further administrative consideration, including the name, position title, and address of the OPM official responsible for the review as stated in § 297.206.

(b) Denial of a request for access to records will be made only by the system manager or designee and only upon a determination that:

(1) The record is subject to an exemption under § 297.304 of subpart C of this part when the system manager has elected to invoke the exemption;

(2) The record is information compiled in reasonable anticipation of a civil action or proceeding; or

(3) The data subject refuses to abide by special procedures for access to records enumerated in § 297.204(c).

§ 297.206 Request for administrative review of denial of access.

(a) For denials of access made under § 297.205(b) of this subpart, the following procedures apply;

(1) For denials made by the agency, when the record is maintained in one of the Office's Government-wide systems of records where the notice for that system has delegated to the agencies the authority to make initial decisions to grant or deny access, a request for administrative review of a denial shall be made only to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415; and

(2) For denials made by an OPM official, a request for administrative review of the denial shall be made only to the General Counsel, Office of Personnel Management, 190 E Street, NW., Washington, D.C. 20415.

(b) The OMP official shall acknowledge receipt of a request for administrative review of a denial of access within ten working days. A decision on the request should accompany this acknowledgement, whenever possible. If it is not possible to reach a decision within ten working days, the requester shall be informed of the approximate date (within thirty working days) when such a decision may be expected.

(c) In reaching a decision, the OPM official will review the criteria, prescribed in § 297.205 of this part, which were cited as the basis for denying access and may seek additional information as deemed necessary.

(d) When a decision is reached, the requester will be informed of the decision; the basis for the decision; the name, position title and business mailing address of the official responsible for the decision; what further action, if any, may be necessary on the part of the agency; and the requester's right to seek judicial review of the decision.

§ 297.207 Judicial review.

Upon receipt of notification that the denial of access has been upheld on administrative review, the requester has the right to judicial review of the decision for up to two years from the date on which the cause for action arises or is discovered. Judicial review may be sought in the district court of the United States in the district in which the requester either resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.208 Request for amendment of record.

(a) Data subjects may request the amendment of their records in writing or in person by contacting the system manager or designee indicated in the notice of systems of records published by the Office in the Federal Register. Requests by mail will be expedited if the words "PRIVACY ACT AMENDMENT REQUEST" appear in capital letters on the face of the envelope and enclosed letter. Misaddressed or misdirected requests will be forwarded promptly to the proper office. Time limits prescribed in § 297.306 of Subpart C of this part will be measured from receipt at the proper office. In each instance when a forwarded request is received, the receiving office shall notify the data subject that the request was improperly addressed or marked, and the date when the request was received in the proper office.

(b) A request for amendment should include the following:

(1) The precise identification of the records sought to be amended (for example, description, title, date, paragraph, sentence, line, and words);

(2) The specific material to be deleted, if any;

(3) The specific material to be added, if any, and the exact place at which it is to be added; and

(4) A statement of the reasons for the request, with all available documents and material that substantiate the request.

(c) If necessary, the official authorized to rule on a request for amendment may seek additional information pertinent to the request to assure that a fair, equitable, and accurate decision is reached.

§ 297.209 Response to request for amendment of records.

(a) The system manager or designee must respond in writing to the requester for amendment of a record within 10 working days of receipt. This response shall inform the request of the decision, whenever possible.

(b) If the decision cannot be reached within 10 working days, the requester shall be informed of the reason for delay and the date (within 20 working days) it is expected that the decision will be made.

§ 297.210 Request for administrative review of denial of an amendment.

(a)(1) A request for administrative review of agencies' denials to amend a record in an OPM system of records shall be addressed to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(2) A request for administrative review of a denial to amend a record by an OPM official shall be addressed to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(b) All requests for review of denials must be made in writing and signed by the data subject. Processing will be expedited if the words "PRIVACY ACT AMENDMENT APPEAL" appear in capital letters on both the envelope and at the top of the appeal papers. Misaddressed or misdirected requests will be forwarded immediately to the proper office. The time limit for response shown in § 297.308 of this part will be measured from the time of receipt in the proper office.

(c) When a request for administrative review of an amendment denial is submitted, the individual must provide a copy of the original request for amendment, a copy of the initial denial, and a statement of the specific reasons why the initial denial is believed to be in error.

(d) When a decision is reached, the requester will be informed of the decision; the basis for the decision; the name, position title and business mailing address of the official responsible for the decision; what further action, if any, may be necessary on the part of the agency; and the requester's right to seek judicial review of the decision.

§ 297.211 Judicial review.

Upon receipt of notification that the denial to amend a record has been upheld on administrative review, the requester has the right to judicial review of the decision for up to two years from the date on which the cause for action arises or is discovered. Judicial review may be sought in the district court of the United States in the District in which either the requester resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.212 Fees.

(a) Generally, the policy of the Office is to provide the first copy of any record or portion thereof, furnished as a result of a Privacy Act request for access, at no cost to the data subject or authorized representative. However, in cases where the Office or agency deems it appropriate (e.g., where the record is voluminous) the system manager or designee at his or her discretion may charge a fee when the cost for copying the record would be in excess of ten dollars ($10.00).

(b) The schedule of OPM fees for duplication appears in Part 294 of this chapter.

(c) Where an agency has established a different fee schedule for the duplication of records it may use that schedule.

(d) There shall be no fees charged or collected from a data subject for the following: search for or retrieval of the data subject's records; review of the records; making a copy of a record when it is a necessary part of the process of making the record available for review; copying at the initiative of the Office or an agency without a request from the individual; transportation of the record; and making a copy of an amended record to provide the individual with evidence of the amendment.

(e) When a fee is requested, the check or money order shall be made payable to the agency and sent to the appropriate system manager or designee.

§ 297.213 Disclosures generally prohibited.

Generally, the Office or any agency may not disclose any record in an OPM system of records to any person or another agency, other than the data subject, unless the disclosure is:

(a) Pursuant to the specific written statement of the data subject authorizing a representative to gain access to the data subject's record, as prescribed in § 297.201 of this subpart;

(b) To anyone or any other agency that requests the data, provided the prior specific written consent of the data subject is obtained;

(c) To a parent of a minor data subject or the legal guardian of a data subject in accordance with 5 U.S.C. 552a(h) and § 207.201 of this subpart;

(d) Among the disclosures without prior consent of the data subject permitted by 5 U.S.C. 552a(b)(1) through (11), and as listed in § 297.503 of Subpart E of this part; or

(e) Required by the Privacy Act and not covered explicitly by the disclosure provisions of 5 U.S.C. 552a(b).

§ 297.214 Request for accounting of disclosures.

(a) Except for disclosures to agency officials who have a need for access to the record, to Office employees requiring access to the Records, or required by the Freedom of Information Act, all disclosures from an OPM Government-wide system of records shall be accounted for by the keeping of a written record of the disclosure as outlined in § 297.508 of this part. An individual may request access to the accounting of disclosures of the individual's record by submitting a Privacy Act request for any such accounting to the appropriate system manager or designee for the appropriate system of records.

(b) The system manager or designee shall respond to such a request within ten working days and shall inform the requester, for each disclosure made; the description of the record disclosed; the date, method, and purpose of each disclosure; the name and address of the person to whom the disclosure was made; and the name and position title of the person making the disclosure.

(c) The only basis for not furnishing an accounting of disclosure is where that disclosure was made under 5 U.S.C. 552a(b)(7). Although such an accounting must be retained, when the system manager or designee is processing a request for access to the accounting of disclosures made from an individual's records, disclosures under 5 U.S.C. 552a(b)(7) will not be provided.

Subpart C—Agency Responsibilities for Processing Privacy Act Requests

§ 297.301 Responsibilities.

(a) All agencies are responsible for protection of individual privacy in their personnel management processes. Each agency is responsible for:

(1) Its internal systems of personnel records for which agencies have sole responsibility; and

(2) Government-wide systems of personnel records which the Office manages and for which agencies and OPM share responsibilities.

(b) The Office is responsible for describing the division of required Privacy Act functions between OPM and the agencies for the Government-wide systems of personnel records OPM manages. This division of functions is described in this part, and in Chapters 293 and 297 of the Federal Personnel Manual.

(c) The Office or agency must respond to all reasonable inquiries concerning the Privacy Act or the regulations contained within Part 297.

§ 297.302 Verification of identity of requester.

The Office or agency shall verify the identity of an individual either requesting access or amendment to the individual's own records or submitting a specific inquiry as defined and in accordance with requirements prescribed in § 297.201 of this part. Alternatively, the system manager or designee may accept other proof of identity commensurate with any unusual circumstances surrounding the request.

§ 297.303 Response to access requests.

(a) *Time limits.* The Office or agency must respond within ten working days after receipt by the system manager or designee to each specific inquiry or request for access. If the requested data or an answer to a specific inquiry cannot be furnished within the ten day period, the response will be sent within that time giving the status of the matter, the expected date the material or answer will be furnished, or requesting any additional information needed to process the specific inquiry or request for access. Action will be completed as soon as possible thereafter, but not later than 20 working days after receipt of the original specific inquiry, request for access, or receipt of the additional information that was requested.

In unusual circumstances and for good cause, an OPM or agency official may decide that action cannot be completed within 20 days. In such a case, the OPM or the agency official will advise the individual of the reason for the delay and the date (not to exceed an additional 20 working days) by which action can be expected to be completed. Unusual circumstances would exist, for example, when the record must be retrieved from archival storage or requested from another agency, when a voluminous amount of material must be reviewed, or where information on other individuals must be separated or deleted from a particular record.

(b) *Granting of access.* The system manager or designee shall make the entire contents of the requested record available to a properly identified data subject or the data subject's authorized representative, except for data that:

(1) Is subject to a properly promulgated exemption and for which the exemption has been applied (§ 297.304)

(2) Requires special procedures for access (§ 297.204); or

(3) Is withheld in reasonable anticipation of a civil proceeding (§ 297.205(b)(2)).

Generally, the Office's policy is that there shall be no charge for the first copy of the information being requested. Thereafter, copies of the same records will be furnished on request in accordance with the fee schedule listed in Part 294 of this Chapter. The system manager or designee, at his or her discretion, can elect to furnish a copy of the material to the requester in person or by mail.

(c) *Denial of access.* Where it is necessary for the system manager or designee to deny access to all or any part of the requested record, the decision must be based on one of the reasons for denial set forth in § 297.205 of Subpart B of this part. In addition to providing the requested information about the denial which is prescribed by § 297.205(a) of this part, the Office or agency official claiming an exemption from the access provisions of the Privacy Act will:

(1) Inform the requester when any portion of the record is exempt and, where appropriate, clearly describe any material in the record that is exempt in its entirety, in such a manner that will enable the requester to know of the existence of such material and to be able to sufficiently describe it in any request for review of the decision exempting it; and

(2) Inform the requester of the basis for any denial and his or her right to appeal the decision to exempt any part or all of the requested record, to the Assistant Director for Agency Compliance and Evaluation, in the case of an agency denial, and in the case of an OPM denial, to the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

§ 297.304 Exempt records.

(a) Several OPM Internal, Central, and Government-wide systems of records contain information for which exemptions appearing at 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6) may be claimed, the systems of records for which the exemptions are claimed, the specific exemptions determined to be necessary and proper with respect to these systems of records, the records exempted, the provisions of the Act from which they are exempted, and the justifications for the exemptions are set forth below.

(b) Specific exemptions.

(1) Administrative Law Judge Applicant Records (OPM/CENTRAL-8).

(i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigatory material compiled solely for the purposes of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(2) Litigation and Claims Records (OPM/CENTRAL-9).

(i) When litigation or claims cases occur, information from other existing

systems of records may be incorporated into the case file. This information may be material for which exemptions have been claimed by the Office in this section. To the extent that such exempt material is incorporated into a litigation or claim case file the appropriate exemption (5 U.S.C. 552a(k)(1), (2), (3), (5), or (6)) shall also apply to the material as it appears in this system. The exemptions shall be only from those provisions of the Act which were claimed for the systems from which the records originated.

(ii) During the course of litigation or claims cases, it may be necessary to conduct investigations to develop information and evidence relevant to the case. These investigative records may include material meeting the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6). Such material is exempt from the requirement of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Act relate to making accounting of disclosures available to the data subject and access to an amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(A) Such investigations may obtain from another Federal agency properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d);

(B) Such investigations may obtain from another Federal agency investigatory material compiled for law enforcement purposes other than material within the scope 5 U.S.C. 552a(j)(2), e.g., administration of the merit system. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(2) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of those records;

(C) Such investigations may obtain from another Federal agency information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(3) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of records by the data subject. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records;

(D) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigatory material compiled solely for the purposes of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source; or

(E) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment by the data subject of this information would compromise the objectivity and fairness of the testing or examination process.

(3) Privacy Act/Freedom of Information Act Case Records (OPM/CENTRAL-10). In paragraphs (1) through (5) and (7) through (9) of this section, the Office has claimed exemptions for other of its systems of records where it felt such exemptions are appropriate and necessary. These exemptions are claimed under 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6). During the course of a Privacy Act/Freedom of Information Act case (which may include access requests, amendment requests, and request for review for initial denials of such requests) exempt materials from those other systems may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into this system, the Office hereby claims the same exemptions for the records as they have in the original primary system of which they are a part.

(4) Personnel Investigations Records (OPM/CENTRAL-11). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (5), and (6) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records.

The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may obtain from another Federal agency properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records, under 552a(c)(3) and (d).

(iii) Personnel investigations may obtain from another Federal agency information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject, and access to and amendment of records.

These exemptions are claimed because this system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source

would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(v) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(5) Presidential Management Intern Program Records (OPM/CENTRAL-13). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(6) Recruiting, Examining, and Placement Records (OPM/GOVT-5).

(i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigative material compiled solely for the purpose of determining the appropriateness of a request for approval of an objection to an eligible's qualification for employment in the Federal service. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record or access to or amendment of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to an amendment of records by the subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualification for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

(7) Personnel Research Test Validation Records (OPM/GOVT-6). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examination process.

§ 297.305 Response to request for administrative review of denial of access.

(a) The Office will make every effort to reach a decision within ten working days on each request for administrative review of a denial of access. If a decision cannot be made within the ten day period, an acknowledgment will be sent within that time stating the status of the request, an expected date for the decision (within thirty working days); or, if necessary, a request for any additional information required to complete processing of the request. A decision shall be reached within thirty working days after receipt of the original request or receipt of the additional information. In unusual circumstances and for good cause, the Office may decide that a decision cannot be reached within thirty working days. In such a case, the Office will advise the requester of the reason for the delay and furnish a date by which the decision can be expected. Unusual circumstances would exist, for example when the record must be retrieved from archival storage or from various locations or when there is a voluminous amount of material to be reviewed.

(b) The requester shall be notified in writing of the Office's decision. If the decision upholds the denial for access, the reason for the decison must be given, along with the name and position title of the official responsible for the decision, and the procedures whereby the requester may seek judicial review of the decision. If the decision is to grant access to the material previously denied, the Office shall inform the requester of the action it has taken to provide the record previously withheld. The Office shall direct the system manager or designee to make available to the requester all or part of the data that was withheld. Where only part of the data originally withheld is to be granted on administrative review, then the Office shall inform the requester of the reasons for sustaining part of the denial, the name and position title of the official responsible for the decision, and the procedures whereby the requester may seek judicial review of the decision.

(c) The system manager or designee who issued the initial denial decision is responsible for providing the record which was the subject of the access request, and must otherwise cooperate with the reviewing official.

§ 297.306 Request for correction/amendment.

(a) Upon receipt of a request to correct or amend a record, when the Office or agency finds that the request is not in accordance with the requirements prescribed in § 297.208 of subpart B of this part, the Office or agency shall in writing, communicate this determination to the requester and solicit clarification. From the standpoint of meeting time limits, the request shall not be considered received until such clarifying information is received.

(b) The Office or agency must respond in writing to a request to amend a record within ten (10) working days. Where appropriate, a response indicating the decision of the Office or agency regarding the request to amend should be furnished at that time. Where a decision cannot be furnished within ten working days, the response shall acknowledge receipt of the request and shall inform the requester of the reasons for the delay and the approximate date (within 20 working days) on which a decision will be issued.

(c) When the request for amendment is granted, the system manager or designee shall make the requested amendment, informing the individual in writing of this action, and provide either a copy of the amended record, or in cases where a copy cannot be provided (for example, erasure of information from a record maintained only in computer media), a statement of how the amendment was effected. Further, the system manager must notify prior

recipients of the record (recipients to whom information was disclosed for which an accounting of disclosure was made) of the amendment. Such notification shall inform the prior recipient of the amendment(s) made and that they are to apprise any other agency or person, to which they have disclosed the record, of the amendment(s) to the record. Also, the system manager or designee should, where practical, and where records are used in determinations concerning individuals, advise all other known holders of the record of the amendment. The requester shall be informed that prior recipients of the record have been requested to amend their copies of the record.

(d) When the request for amendment is denied, the system manager or designee shall inform the individual in writing that the request is denied and provide the following information:

(1) The system manager's or designee's name and position title;

(2) The reason for denial, including citation of the appropriate sections of the Act and § 297.307(c) of this subpart; and

(3) The procedures for requesting a review of the denial, including the name and address of the Assistant Director for Agency Compliance and Evaluation, or in the case of an OPM denial, the General Counsel, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, as appropriate (see § 297.210).

(e) In those circumstances where the request is partially granted and partially denied, inform the requester how the amendment has been partially effected (paragraph (c) of this section) and the basis for the denial of part of the request (paragraph (d) of this section).

§ 297.307 Basis for denials of request for amendments.

(a) The following criteria will be considered by the system manager or designee in reviewing initial requests for amendment of records:

(1) The sufficiency of the evidence submitted by the data subject;

(2) The factual accuracy of the information submitted and the information in the record;

(3) The relevancy, necessity, timeliness, and completeness of the information in light of the purpose for which it was collected;

(4) The degree of possibility that denial of the request could result in unfair determinations adverse to the data subject;

(5) The character of record sought to be amended;

(6) The propriety and feasibility of complying with specific means of amendment requested by the data subject; and

(7) The possible involvement of the record in a judicial or quasi-judicial process.

(b) An individual requesting an amendment of a record has the burden of supplying information in support of the propriety and necessity of the amendment request. The decision on the request would then be rendered based on a review of the data submitted. The Office or agency official is not required to gather supporting evidence for the individual and reserves the right to verify the evidence which the individual submits.

(c) Amendment of a record will be denied upon a determination by the system manager or designee that:

(1) the record is subject to an exemption from the provisions of the Privacy Act allowing amendment of records, and such exemption is claimed under § 297.304 of this part;

(2) The information submitted by the data subject is not accurate, relevant, or of sufficient probative value;

(3) The amendment would violate an enacted statute or regulation;

(4) The individual refuses to provide information which is necessary to process the request to amend the record; or

(5) The record for which amendment is requested is a record presented in a judicial or quasi-judicial proceeding, or maintained in anticipation of being used in a judicial or quasi-judicial proceeding, when such record is or will become available to the individual under that proceeding and may be contested during the course of that proceeding.

§ 297.308 Response to request for administrative review of denial of request for amendment.

(a) The Office shall respond in writing within ten working days to each request for administrative review of a denial of amendment. If a decision cannot be made within the ten day period, an acknowledgement letter will be sent within that time explaining the delay and furnishing an expected date for the decision. A decision on the request must be made within thirty working days after receipt of the request. Only for good cause shown, and at the discretion of the responsible OPM official, can this time limit be extended. Any extension requires written notification to the requester explaining the reason for the extension and furnishing a new expected date for the decision. Generally, such extension shall be for no more than an additional thirty working days.

(b) The requester shall be notified in writing of the Office's decision, and the responsible official shall:

(1) Grant the requested amendment in its entirety and notify the requester of all action taken to effect the amendment and to notify prior recipients of the record (see § 297.308(c) for actions required); or

(2) Uphold the decision not to amend the record as requested and inform the requester of:

(i) The basis for the decision;

(ii) The name and position title of the official responsible for the decision;

(iii) The requester's right to file a concise statement of disagreement with the decision and the record contents as well;

(iv) The Office's or the agency's right, where appropriate, to attach the decision notice to the concise statement of disagreement; and

(v) The procedures whereby the requester may seek judicial review of the decision; or

(3) Grant the requested amendment in part, and for that part granted, inform the requester as prescribed in paragraph (b)(1) of this section. For that part denied, inform the requester as prescribed in paragraph (b)(2) of this section.

(c) The system manager or designee who issued the initial denial decision is responsible for providing the record which was the subject of the amendment request, and must otherwise cooperate with the reviewing official.

Subpart D—Requirements for Recordkeeping Under the Privacy Act

§ 297.401 Responsibility for systems of records.

(a) The Office is responsible for the types of systems of records as shown in § 297.101 of this part.

(b) The Office shall be responsible for publishing the annual Federal Register notice of systems of records that will prescribe procedures for processing Privacy Act requests, and for issuing regulations for these systems. The Office also shall be responsible for all recordkeeping requirements prescribed in this subpart except for initial requests for access and amendment and for preparation and submission of the annual report for the Government-wide systems of records that agencies maintain.

(c) Agencies shall be responsible for processing initial requests for access and amendment for those Government-wide system of records identified as OPM/GOVT in the annual publication

of system notices. When an agency denies access to or amendment of records in one of these Government-wide systems of records, the Office is solely responsible for any administrative review of that decision.

(d) Agencies shall include in their annual reports, in addition to that information required by the Office of Management and Budget dealing with their own systems of records, the information descriptive of its activities under the Privacy Act on the portions of the Government-wide systems of personnel records they maintain.

§ 297.402 Responsibility for litigation concerning the regulations.

In any litigation action arising out of the Privacy Act, where it is alleged that an agency is in violation of the Act because of its adherence to the regulations prescribed in this part, the Office and not the agency shall respond for the Government.

§ 297.403 Publication of annual notices.

(a) The Office will publish annually in the Federal Register, in the format prescribed by the General Services Administration, a notice describing the systems of records for which it is responsible. These include both the Government-wide systems and the OPM INTERNAL or CENTRAL systems listed in FPM Chapter 297. The notice will contain:

(1) The name and location(s) of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of users and purposes of such uses;

(5) The policies and practices regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The position title and business address of the OPM official(s) responsible for the system of records;

(7) The procedures an individual must follow to be notified if a system of personnel records contains a record about the individual;

(8) The procedures an individual must follow to gain access to a record about the individual in a system of records, and the procedures for amending its content;

(9) The categories of sources of records in the system; and

(10) Any exemptions from Privacy Act requirements which are claimed for the system.

(b) In publishing annual notices in the Federal Register for systems of personnel records for which they are responsible, agencies shall not publish system notices for any records which are included in the Office's Government-wide systems of personnel records. Agencies may publish notices referencing the OPM Government-wide notices, which indicate the geographical locations for these records and the agency official(s) designated to handle requests for access or amendment.

§ 297.404 Reports on changes to systems of records.

(a) The Office shall provide to Congress and the Office of Management and Budget, advance notice of any proposal to establish or alter any OPM system of personnel records. This report will be submitted in accordance with guidelines provided by the Office of Management and Budget.

(b) Agencies shall propose any changes to the Office's Government-wide systems or systems notices to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

§ 297.405 Penalties.

(a) The Privacy Act provides that, if an officer or employee of the Office or any agency willfully maintains a system of personnel records without meeting the notice requirements of this part, that individual may be guilty of a misdemeanor and fined not more than $5,000.

(b) Whenever an agency or an OPM official fails to adhere to the requirements of this part, and that failure adversely affects an individual, the individual may bring a civil action against the agency or the Office in the district court of the United States either in which the complainant resides, has his or her principal place of business, where the agency records are situated, or in the District of Columbia.

§ 297.406 Changing or adding routine uses.

(a) Whenever a new routine use, or substantive change in an existing routine use, is proposed for one of the systems of personnel records for which the Office has published the system notice, OPM will publish in the Federal Register, in accordance with 5 U.S.C. 552a(e)(11), a notice of intention to establish a new or revised routine use. The notice will invite public comment thereon and shall contain the following information:

(1) The name of the system of personnel records for which the new or revised routine use is to be established;

(2) The authority for maintaining the system of personnel records;

(3) The categories of records maintained in the system;

(4) The proposed new or revised routine use or uses;

(5) The purpose of the new or revised routine use or uses; and

(6) The categories of recipients for each use.

This notice may be published at any time, but not less than 30 days prior to the next annual publication of notices.

(b) Agency requests for additional routine uses for one of the Government-wide systems of personnel records must be sent to:

Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

(c) In publishing new or revised routine uses in the Federal Register, for systems of personnel records for which they are responsible, agencies may not unilaterally establish any routine uses for records in OPM's Government-wide systems of personnel records in addition to those published in the OPM notices for these systems. The Civil Service Reform Act, Pub. L. 95-454, requires OPM to review agencies' personnel policies and practices to ensure a civil service free from prohibited personnel practices and operating on legally mandated merit system principles. To facilitate these reviews of agency practices, agencies shall list OPM officials as routine users for appropriate agency internal personnel record systems.

§ 297.407 Providing Privacy Act statements.

Agencies shall ensure that individuals from whom information is collected about themselves, when the information is to be maintained in an OPM Government-wide system of records are informed of the authority and reasons for requesting the information, how it may be used, and what the consequences are, if any, of not providing the information. As a minimum, the individual should be given the following information in language which is explicit and easily understood and not so lengthy as to deter an individual from reading it:

(a) Cite the specific statute or Executive Order, including a brief title or subject, which authorizes the agency to collect the personal information it is requesting. Inform the individual whether or not a response is mandatory

or voluntary and any possible consequences of failing to respond;

(b) Cite the principal purpose(s) for which the information will be used by the agency which maintains it; and

(c) Cite the probable routine uses for which the information may be employed. This may be a summary of the information published in the system notices.

§ 297.408 Annual reports.

(a) By April 30th of each year, the Office will submit to the Office of Management and Budget, a report concerning activities under the Privacy Act of 1974 as they relate to OPM systems of personnel records for the preceding year.

(b) To the extent that agencies have physical custody of records in the Office's Government-wide systems of personnel records, and have the authority in some instances to grant access to and amend these records, agencies will include in their annual report to OMB, their Privacy Act activities involving these records as outlined in § 297.401(d) of this subpart.

§ 297.409 Annual notice to employees.

Agencies must provide, at the individual's request, an opportunity for an individual to review automated and manual personnel records that are maintained in a system of records and concern the individual. Agencies, at least annually, must announce this opportunity to request access to such records by a notice that reaches all employees.

Subpart E—Disclosures From Systems of Records

§ 297.501 Restrictions on disclosure of a deceased data subject's record.

Whenever a specific request is made for access to the record of a deceased data subject, the information requested will be disclosed unless it pertains to someone other than the data subject and disclosure would be considered to be a clearly unwarranted invasion of the living person's privacy or can otherwise be legally withheld.

§ 297.502 General written consent requirement.

The Office or agency is prohibited from disclosing a record, from a system of records without obtaining the prior written consent of the data subject, except as provided below.

§ 297.503 Disclosures permitted without prior written consent of the data subject.

Section 297.213 of this part described conditions under which disclosures of records could be made to parties other than the data subject. Among those conditions, § 297.213(e) refers to the (b)(1) through (b)(11) provisions of the Privacy Act (5 U.S.C. 552a). These provisions are shown below and allow disclosure of records without the prior written consent of the data subject. The Office and agencies are permitted to disclose information from a system of records without the prior consent of the data subject, whenever such disclosure is:

(a) To those officers and employees of the agency which maintain the record and who have a need for the record in the performance of their duties (includes disclosure of records to OPM officials from any Government-wide system maintained by agencies for the Office, e.g., disclosure of Official Personnel Folders);

(b) Required under the Freedom of Information Act (5 U.S.C. 552);

(c) Permitted by a routine use that has been published in the Federal Register;

(d) To the Bureau of the Census for purposes of planning or carrying out a Census or survey or related activity pursuant to the provisions of title 13;

(e) To a recipient who has provided the Office or an agency with advance adequate written assurance that the record will be used soley as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

Assurance includes:

(1) a statement of the purpose for requesting the records; and

(2) certification that the records will be used only for statistical purposes;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health and safety of an individual (not necessarily the data subject). Upon such disclosure, the data subject must be notified in writing of the disclosure. This requirement is met when notification is transmitted to the last known address of the data subject;

(i) To either House of Congress, or to a committee or subcommittee (joint or of either House) to the extent that the subject matter falls within the jurisdiction of the committee or subcommittee;

(j) To the Comptroller General, or any authorized representative of that office in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction, as defined in § 297.504 of this part.

§ 297.504 Disclosure pursuant to compulsory legal process.

(a) The Office or agency may disclose, without prior consent of the data subject, specified information from a system of records whenever such disclosure is pursuant to an order issued by a court of competent jurisdiction, Grand Jury, or quasi-judicial agency. For purposes of this subpart, a court of competent jurisdiction includes the judicial system of a state, territory, or possession of the United States.

(b) Notice of the order shall be provided as soon as practicable after service of the order and shall be mailed to the last known address of the individual and state the name and number of the case or proceeding, and the nature of the information sought.

(c) Before complying or refusing to comply with the order, an official with authority to disclose records under this subpart will consult legal counsel to ensure that the response is appropriate.

§ 297.505 Disclosure pursuant to a subpoena.

(a) The Office or agency may disclose, without prior consent of the individual, specified information from a system of records whenever such disclosure is pursuant to subpoena issued in connection with a judicial or administrative proceeding.

(b) Before responding to a subpoena, an official with authority to disclose records under this part, will consult, as appropriate, with legal counsel to ensure that:

(1) The requested materials are not privileged and are relevant to the subject matter of the related judicial or administrative proceeding.

(2) Motion is made to quash or modify a subpoena that is unreasonable or oppressive;

(3) Motion is made for a protective order where necessary to restrict the use or disclosure of any information furnished for purposes other than those

of the judicial or administrative proceeding; or

(4) Request for an extension, if needed, of the time allowed for response is made.

(c) If a subpoena for production of documents requests appearance of an agency employee, the response shall be to furnish certified copies of the appropriate records to the requesting party. In no event will original documents be released from the physical control of a responsible office or agency employee.

(d) If oral testimony is sought by the subpoena, an explanation by the party seeking the testimony which sets forth the testimony desired, must be furnished. The employee or former employee of the office who has been subpoenaed to provide material or information shall consult with legal counsel to determine the matters about which the employee may properly testify.

(e) In all situations concerning a subpoena or other demand for an employee of the Office or agency to produce any material or testimony relating to information contained in the files of the Office or agency acquired as part of the employee's performance of his or her official duties, the employee shall not disclose the information without prior approval of the appropriate Office or agency official.

(f) If it is decided that the information or material should not be provided, the employee or former employee subpoenaed shall respectfully decline to comply with the demand on the basis of instructions from the appropriate Office or agency official.

(g) When subpoenaed records concerning a party or a non-party are subject to the Privacy Act, the disclosing official of the Office or agency shall be responsible for notifying the individual of the subpoena's issuance. Notice shall be mailed to the last known address of the individual and state the date the subpoena is returnable, the name and number of the case or proceeding, and the nature of the information sought. Notice shall be provided as soon as practicable after service of the subpoena.

§ 297.506 Accounting of disclosure.

(a) Whenever an accounting of disclosure is required, as stated in § 297.214 of this part, the accounting shall include:

(1) The description of the record disclosed;

(2) The name, position title, and address of the person to whom the disclosure was made;

(3) The method and purpose of disclosure;

(4) The name and position title of the person making the disclosure; and

(5) The date of the disclosure of the record.

(b) The Office or agency must record the accounting of disclosures and must retain this accounting for at least five years or the life of the record, whichever is longer. This accounting of disclosures may be maintained either in the record itself or elsewhere, and must be in a manner that permits an accurate and complete response to any proper request for an accounting of all disclosures made.

(c) Except for disclosures made under 5 U.S.C. 552a(b)(7) for law enforcement purposes, or disclosures from Office systems of personnel records for which an exemption from 5 U.S.C. 552a(c)(3) has been claimed, the accounting of disclosures is available to the data subject on request.

(d) For purposes of this subpart, the system of accounting of disclosures is not a system of records as defined in this part and no accounting need be maintained for disclosures of the accounting of disclosures.

§ 297.507 Penalties.

(a) Whenever the Office or agency fails to comply with any provision of this subpart in such a way as to have an adverse effect on a data subject, that data subject may bring civil action against the Office or agency.

(b) Whenever an Office or agency employee knowingly and willfully makes a disclosure to any person or agency not entitled to receive it, that individual may be guilty of a misdemeanor and fined not more than $5,000.

(c) Whenever a requester, or an Office or agency employee knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses, that individual may be guilty of a misdemeanor and fined not more than $5,000.

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5 CFR Part 351

Reduction in Force; Retention Preference

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: These amendments, issued under the Civil Service Reform Act of 1978, provide that a preference eligible employee with a service-connected disability of 30 percent or more is entitled (1) to be retained over other preference eligible employees in the determination of retention standing, and (2) to receive a specific notice, with a right of review by the Office, if an agency finds that the employee is not able to fulfill the physical requirements of a position to which he/she would otherwise have been assigned under the reduction in force regulations.

EFFECTIVE DATE: December 10, 1979.

FOR FURTHER INFORMATION CONTACT: Ted Dow or Thomas A. Glennon, (202) 632-5623.

SUPPLEMENTARY INFORMATION: On January 30, 1979, OPM published in the Federal Register (44 FR 5863) interim reduction in force regulations, effective January 11, 1979, implementing the retention preference provisions of the Civil Service Reform Act. Interested parties were given 60 days to submit comments on the interim regulations.

A total of five comments were received: Three from Federal agencies and two from labor organizations. Three respondents agreed with the interim regulations. The union comments suggested changes in Part 351 that were outside the scope of the regulations, with one exception. The exception, if adopted, would have intruded into the area of management's reserved right to assign duties.

The following changes in Part 351 are now made final, including two further editorial amendments to the regulations:

(1) Subpart 351-A, which consists of the statutory requirements for retention preference, as found in Subchapter I of Chapter 35 of title 5, United States Code, is not adopted as a final regulation.

(2) Section 351.201(c) is amended to read "U.S. Postal Service" rather than "Post Office Department." (This is an editorial change.)

(3) A new § 351.201(g) is added to explain that an employee in the Senior Executive Service is not covered by Part 351.

(4) Section 351.501(a)(2) is amended to include new retention subgroup AD.

(5) Section 351.501(a)(3) is amended to clarify how employees are ranked within a subgroup.

(6) Section 351.501(e) is amended to delete the definition of employees included in subgroup A, and to incorporate the definition of employees included in new retention subgroup AD.

(7) Section 351.501(f) includes the definition of employees included in subgroup A; this definition was formerly incorporated in § 351.501(e).

(8) Section 351.501(g) includes the definition of employees included in

subgroup B; this definition was formerly incorporated in § 351.501(f).

(9) A new § 351.701(d) covers the right of certain disabled preference eligible employees to receive a notice from the employing agency if it finds that the employee is unable to fulfill the physical requirements of a position which would have otherwise been offered to the employee under Part 351. Also, the word "should" in the third sentence of this paragraph is corrected to read "shall" in conformance with the Civil Service Reform Act; this is an editorial change.

(10) Section 351.705(a)(3) is amended to permit an agency, at its discretion, to adopt administrative assignment provisions permitting an employee in subgroup III–AD to displace an employee in subgroup III–A or III–B, or an employee in subgroup III–A to displace an employee in subgroup III–B.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly 5 CFR Part 351 is amended as follows:

PART 351—REDUCTION IN FORCE

§ 351.101 (Subpart A)—[Revoked]

(1) Subpart A is revoked in its entirety.

(2) In § 351.201, paragraph (c) is amended and paragraph (g) is added. As amended, § 351.201 reads as follows:

§ 351.201 Use of regulations.

(a) Each agency shall follow this part when it releases a competing employee from his/her competitive level by separation, demotion, furlough for more than 30 days, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, reorganization, reclassification due to change in duties, or the exercise of reemployment rights or restoration rights.

(b) This part does not require an agency to fill a vacant position. However, when an agency, in its discretion, chooses to fill a vacancy by an employee who has been reached for release from his/her competitive level for one of the reasons named in paragraph (a) of this section, this part shall be followed.

(c) This part does not apply to the change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

(d) An agency authorized to administer alien employee programs under section 444 of the Foreign Service Act of 1946, as amended (22 U.S.C. 889), may include special plans for reduction in force in its alien employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

(e) This part does not apply to the termination of a temporary promotion or to the return of an employee to the position from which he/she was temporarily promoted or his/her reassignment or demotion to a different position that is not at a lower grade or level than the position from which he/she was temporarily promoted.

(f) This part does not apply to the release from his/her competitive level of a National Guard technician under section 709 of title 32, United States Code.

(g) This part does not apply to an employee in the Senior Executive Service.

(3) In § 351.501, paragraph (a) (2), (3), (e), (f), and (g) are amended. As amended, § 351.501 reads as follows:

§ 351.501 Tenure groups and subgroups—competitive service.

(a) Each agency shall classify the competing employees on a retention register who occupy positions in the competitive service in the following groups and subgroups on the basis of tenure of employment and veteran preference. The descending order of retention standing:

(1) By groups is group I, group II, group III;

(2) Within each group is subgroup AD, subgroup A, subgroup B;

(3) Within each subgroup persons are ranked beginning with the earliest service date.

(b) Group I includes each career employee who is not serving a probationary period. A career employee in an obligated position is in group I only when competing for positions at and below the grade in which he/she last served on a permanent basis.

(c) Group II includes each employee serving a probationary period, each career-conditional employee, and each career employee in an obligated position.

(d) Group III includes each indefinite employee, each employee serving under a temporary appointment pending establishment of register, each employee in status quo, and each employee serving under other nonstatus nontemporary appointment.

(e) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(f) Subgroup A includes each preference eligible employee not included in subgroup AD.

(g) Subgroup B includes each nonpreference eligible employee.

(4) In § 351.701 paragraph (d) is added. As amended, § 351.701 reads as follows:

§ 351.701 Qualifications for assignment.

(a) Except as provided in § 351.702, an employee is qualified for assignment under § 351.603 if the employee:

(1) Meets the Office standards and requirements for the position, including any minimum educational requirement;

(2) Is physically qualified for the duties of the position;

(3) Meets any special qualifying condition which the Office has approved for the position; and

(4) Has the capacity, adaptability, and any special skills needed to satisfactorily perform the duties and responsibilities of the position without undue interruption to the activity.

(b) An agency may not consider the sex of an employee as a factor in determining the employee's qualification for a position, except when the position is one for which restriction of certification of eligibles by sex is found justified by the Office.

(c) An employee who is carried on leave of absence because of a compensable injury and is released from his/her competitive level may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position when the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to his/her recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines that, on the basis of evidence before it, a preference eligible employee who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this Part, the agency must notify the Office of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within fifteen days of the notification, to the Office, which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The Office shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be

made before the agency may select any other person for the position. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it must send its finding to both the agency and the employee. The agency must comply with the findings of the Office. The functions of the Office under this paragraph may not be delegated to an agency.

(5) In § 351.705 paragraph (a)(3) is amended. The section reads as follows:

§ 351.705 Administrative assignment.

(a) An agency may, in its discretion, adopt provisions which:

(1) Provide for assignments across competitive areas;

(2) Permit a competing employee to displace an employee with lower retention standing in the same subgroup when it cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(3) Permit an employee in subgroup III–AD to displace an employee in subgroup III–A or III–B, or permit an employee in subgroup III–A to displace an employee in subgroup III–B; or

(4) Provide competing employees in the excepted service with assignment rights similar to those in § 351.703 and in paragraphs (a) (1), (2), and (3) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of a less-than-full-time employee to a full-time position;

(4) May not provide for the assignment of an employee in a competitive position to a position in the excepted service; and

(5) May not provide for the assignment of an excepted employee to a position in the competitive service.

(5 U.S.C. 1302, 3502.)

FR Doc. 79-34783 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-01-M

MERIT SYSTEMS PROTECTION BOARD

5 CFR, Part 1201, Appendix II

Appropriate Office for Filing Appeals

AGENCY: Merit Systems Protection Board.

ACTION: Final Rules; Change of Address.

SUMMARY: This document amends Merit Systems Protection Board regulations relating to the appropriate field office for filing appeals. This amendment is necessary because of change of address.

EFFECTIVE DATE: November 19, 1979.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, Jr., Acting Director, Office of the Secretary—202–653–7130.

SUPPLEMENTARY INFORMATION: 5 CFR, Part 1201, Appendix II, Appropriate Field Office for Filing Appeals is amended by revising Paragraph 11 to read as follows: 11. WASHINGTON, D.C. FIELD OFFICE: Skyline Place No. 2, 5203 Leesburg Pike, Baileys Crossroads, Virginia 22041.

(Washington, D.C. Metropolitan area, all overseas areas not otherwise covered)

Merit Systems Protection Board,

Ruth T. Prokop,

Chairwoman.

[FR Doc. 79-34749 Filed 11-8-79; 8:45 am]

BILLING CODE 6325-20-M

5 CFR Part 1206

Interim Regulations for Expediting the Closure of Certain Board Meetings

AGENCY: Merit System Protection Board.

ACTION: Interim Regulations and request for comments.

SUMMARY: The Merit Systems Protection Board issues interim regulations establishing procedures for the closure of certain meetings of the Board. Since the establishment of the Board, it has become apparent that the vast majority of the board's meeting will involve the consideration of decisions rendered in its field offices on employee appeals. The Board has determined, under the provisions of the Government in the Sunshine Act, that it is appropriate to close Board meetings where these cases are considered.

DATES: Effective date: November 9, 1979. Written comments should be submitted on or before January 8, 1980.

ADDRESS: Comments should be addressed to the Office of the Secretary of the Merit Systems Protection Board, 1717 H Street, N.W., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Donald L. Cox, Deputy General Counsel, Merit Systems Protection Board, Washington, D.C. 20419 (202–653–7157).

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board was created by Reorganization Plan No. 2 of 1978. Statutory basis for the Board's various authorities was provided by the Civil Service Reform Act of 1978, effective January 11, 1979. Since the establishment of the Board, it has become apparent that the vast majority of the Board's meetings will involve the consideration of decisions rendered in its field offices on employee appeals. The board has determined, under the provisions of 5 U.S.C. 552b(c)(10), that it is appropriate to close Board meetings where these cases are considered. In view of the large number of case involved and the regularity with which these meetings will occur, the Board has further determined that it would be appropriate to close these meetings under the expedited procedures provided in 5 U.S.C. 552b(d)(4).

These expedited procedures will be applicable to cases which have been adjudicated on the record before a presiding official or administrative law judge of the Board after an opportunity for hearing; such cases will not involve the consideration by the Board of new evidence or new legal arguments on issues other than those raised in the record.

Inasmuch as there are presently before the Board a large number of cases to which these regulations pertain, several of which have been pending for more than sixty (60) days, the Board has determined that good cause exists to make these regulations effective immediately so that there will be no further delay in case processing.

Issued November 6, 1979.

By Order of the Board.

Ruth T. Prokop,

Chairwoman, Merit Systems Protection Board.

Accordingly, it is proposed that Part 1206 be amended to add § 1206.9 as follows:

§ 1206.9 Procedures for expedited closing of meetings.

In lieu of the procedures specified in §§ 1206.4 through 1206.8, and 1206.11 and 1206.12, the Board may expedite the closing of its meetings under the following conditions using the following procedures:

(a) *Finding:* The major part of regular Board business consists of reviewing field office initial decisions made on the record after an opportunity for a hearing and initial decisions made on the record by an administrative law judge. Based upon a review of this caseload, the legislative history of the Civil Service Reform Act of 1978 (Public Law 95–454), the Government in the Sunshine Act (5 U.S.C. § 552b), and the Board's regulations at 5 C.F.R. Part 1201 the Board finds that a majority of its meetings may properly be closed to the public under 5 U.S.C. 552b(c)(10) and (d)(4).

Absent a compelling public interest to the contrary, meetings or portions of meetings that can be expected to be

closed under these procedures include: consideration of petitions to review or cases that have been reopened or reviewed pursuant to 5 C.F.R. § 1201.114 through 1201.117; administrative law judge disciplinary cases heard initially by an administrative law judge under 5 C.F.R. § 1201.131 et seq.; and Special Counsel actions heard by an administrative law judge under 5 C.F.R. § 1201.129.

(b) *Announcement:* Public announcement of the time, place, and subject matter of meetings or portions thereof that are closed under this provision shall be made at the earliest practicable time.

(c) *Procedure for Closing:* At the beginning of a meeting or portion of a meeting to be closed under this section, the Board may, by recorded vote of two of its members, determine to close the meeting of portion thereof to public observation following receipt of a General Counsel's certification pursuant to § 1206.6(b).

(d) *Record Availability:* In the case of a meeting or portion of a meeting closed pursuant to this subsection, as soon as practicable, the Board shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Board to close the meeting; and

(2) The General Counsel certification pursuant to § 1206.6(b).

(5 U.S.C. 552b)

[FR Doc. 79-34900 Filed 11-8-79; 8:45 am]
BILLING CODE 6325-20-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 225]

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 November 11–17, 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: November 11, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

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

The committee met on November 6, 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 is somewhat easier.

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 puposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, 202–447–5975.

§ 910.525 Lemon Regulation 225.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period November 11, 1979, through November 17, 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: November 7, 1979.

D. S. Kuryloski,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-34940 Filed 11-8-79; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Domestic Licensing Proceedings; Modified Adjudicatory Procedures

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Suspension of 10 CFR 2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings.

SUMMARY: As a result of the Three Mile Island accident, the Commission has decided to make interim modifications to the procedures by which it supervises and reviews adjudicatory licensing decisions involving power reactors. It has decided to suspend until further notice 10 CFR 2.764 which is its rule of practice on issuance of licenses after adjudicatory decisions.[1] Furthermore, it has specified the procedures by which new licenses, permits and authorizations may be issued. As provided in the Interim Statement on Policy and Procedure, 44 FR 58559 (October 10, 1979), this action will not affect non-adjudicatory proceedings or other adjudicatory matters including enforcement and license amendment proceedings, appellate decisions and partial initial decisions not authorizing issuance of new licenses or permits.

This suspension of 10 CFR 2.764 and the related statement of policy deal with Commission rules of practice. For that reason, and because prior notice and comment and delayed effectiveness would further delay adjudicatory decisions from being rendered and from being addressed by the Commission, and so would be contrary to the public interest, this suspension and statement of policy shall be effective without prior public notice and comment and good cause exists for making the suspension and statement effective upon publication. However, the Commission will consider any public comments on these modified procedures which are filed with the Secretary of the

[1] The Commission currently has underway a study of whether, apart from this temporary measure, the immediate effectiveness rule should be retained, modified, or abolished. Nothing in today's action is intended to prejudice the outcome of that study.

Commission within 30 days of publication of this notice.

The actions described herein constitute the Commission's final action on the petitions it has received in the Black Fox and Skagit proceedings.

EFFECTIVE DATE: November 9, 1979.

FOR FURTHER INFORMATION CONTACT: Stephen S. Ostrach, Esq., Office of the General Counsel, (202) 634-3224.

SUPPLEMENTARY INFORMATION: The Commission's Interim Statement of Policy and Procedure, 44 FR 58559 (October 10, 1979), indicated that the Commission would subsequently decide the procedures by which it would exercise increased supervision over adjudicatory licensing decisions in the aftermath of the investigations of the Three Mile Island accident. That Statement also indicated that new construction permits, limited work authorizations and operating licenses for power reactors would be issued "only after action of the Commission itself."

The Commission has now determined that, until further notice, adjudicatory proceedings will be conducted as described below. The Commission has adopted this approach because it achieves the objective of increased Commission supervision of licensing actions while (1) avoiding undue delay and duplication of effort by adjudicators and parties; and (2) allowing the Commission maximum flexibility in terms of deciding whether, in light of its other responsibilities, particular proceedings or issues warrant its early intercession or can appropriately be left to the ordinary adjudicatory processes (subject, of course, to ultimate Commission review at the conclusion of the proceeding).

When no formal adjudicatory proceeding has been conducted on an application for an operating license for a power reactor, and insofar as issues have not been placed in controversy or determined by the Licensing Board or Appeal Board in a formal adjudicatory proceeding on such an application, the Commission will informally review the recommendations of its staff on license issuance and any such license will be issued only after action of the Commission itself. In conducting such an informal review, there will be due regard for rights to a hearing as provided under present law.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and Sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10 Chapter I, Code of Federal Regulations, Part 2, are published as a document subject to codification.

§ 2.764 [Amended]

1. Section 2.764 of 10 CFR Part 2 is amended by adding a footnote 1 at the end thereof.[1]

2. 10 CFR Part 2 is amended by adding an Appendix B at the end thereof to read as follows: "Appendix B—Suspension of 10 CFR 2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings".

Appendix B—Suspension of 10 CFR § 2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings

1. Atomic Safety and Licensing Boards

Atomic Safety and Licensing Boards shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would otherwise authorize. The Boards' decisions shall not become effective until the Appeal Board and Commission actions outlined below have taken place.

In reaching their decisions the Boards should interpret existing regulations and regulatory policies with due consideration to the implications for those regulations and policies of the Three Mile Island accident. In this regard it should be understood that as a result of analyses still under way the Commission may change its present regulations and regulatory policies in important respects and thus compliance with existing regulations may turn out to no longer warrant approval of a license application. As provided in paragraph 3 below, in addition to taking generic rulemaking actions, the Commission will be providing case-by-case guidance on changes in regulatory policies in conducting its reviews in adjudicatory proceedings. The Boards shall, in turn, apply these revised regulations and policies in cases then pending before them to the extent that they are applicable. The Commission expects the Licensing Boards to pay particular attention in their decisions to analyzing the evidence on those safety and environmental issues arising under applicable Commission regulations and policies which the Boards believe present serious, close questions and which the Boards believe may be crucial to whether a license should be come effective before full appellate review is completed. Furthermore, the Boards should identify any aspects of the case which, in their judgment, present issues on which prompt Commission policy guidance is called for. The Boards may request the assistance of the parties in identifying such policy issues but, absent specific Commission directive, such policy issues shall not be the subject of discovery, examination, or cross-examination.

2. Atomic Safety and Licensing Appeal Boards

Within sixty days of the service of any Licensing Board decision that would otherwise authorize licensing action, the Appeal Board shall decide any stay motions that are timely filed.[2] For the purpose of this policy, a "stay" motion is one that seeks to defer the effectiveness of a Licensing Board decision beyond the period necessary for the Appeal Board and Commission action described herein. If no stay papers are filed, the Appeal Board shall, within the same time period (or earlier if possible), analyze the record and decision below on its own motion and decide whether a stay is warranted. It shall not, however, decide that a stay is warranted without giving the affected parties an opportunity to be heard.

In deciding these stay questions, the Appeal Board shall employ the procedures set out in 10 CFR 2.788. However, in addition to the factors set out in 10 CFR 2.788(e), the Board will give particular attention to whether issuance of the license or permit prior to full administrative review may: (1) Create novel safety or environmental issues in light of the Three Mile Island accident; or (2) prejudice review of significant safety or environmental issues. In addition to deciding the stay issue, the Appeal Board will inform the Commission if it believes that the case raises issues on which prompt Commission policy guidance, particularly guidance on possible changes to present Commission regulations and policies, would advance the Board's appellate review. If the Appeal Board is unable to issue a decision within the sixty-day period, it should explain the cause of the delay to the Commission. The Commission shall thereupon either allow the Appeal Board the additional time necessary to complete its task or take other appropriate action, including taking the matter over itself. The running of the sixty-day period shall not operate to make the Licensing Board's decision effective. Unless otherwise ordered by the Commission, the Appeal Board will conduct its normal appellate review of the Licensing Board decision after it has issued its decision on any stay request.

3. Commission

Reserving to itself the right to step in at any earlier stage of the proceeding, including the period prior to issuance of the Licensing Board's initial decision, the Commission shall, promptly upon receipt of the Appeal Board decision on whether the effectiveness of a Licensing Board decision should be further delayed, review the matter on its own motion. The parties shall have no right to file pleadings with the Commission with regard to the Appeal Board's stay decision unless requested to do so.

The Commission will seek to issue a decision in each case within 20 days of receipt of the Appeal Board's decisions. If it

[1] The temporary suspension of this rule in certain proceedings and related matters are addressed in Appendix B to this part.

[2] Such motions shall be filed as provided by 10 CFR 2.788. No request need be filed with the Licensing Board prior to filing with the Appeal Board. *Cf. Public Service Company of New Hampshire*, (Seabrook Station, Units 1 and 2), ALAB-338, 4 NRC 10 (1976).

The sixty-day period has been selected in recognition of two facts. first, allowing time for service by mail, close to thirty days may elapse before the Appeal Board has all the stay papers before it. Second, the Appeal Board may find it necessary to hold oral argument.

does not act finally within that time, it will state the reason for its further consideration and indicate that time it anticipates will be required to reach its decision. In such an event, if the Appeal Board has not stayed the Licensing Board's decision, the initial decision will be considered stayed pending the Commission's decision.

In announcing the result of its review of any Appeal Board stay decision, the Commission may allow the proceeding to run its ordinary course or give whatever instructions as to the future handling of the proceeding it deems appropriate (for example, it may direct the Appeal Board to review the merits of particular issues in expedited fashion; furnish policy guidance with respect to particular issues; or decide to review the merits of particular issues itself, bypassing the Appeal Board). Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

4. Application of Procedures

The above procedures apply only to matters considered in adjudicatory proceedings for the issuance of nuclear power reactor construction permits (including limited work authorizations) and operating licenses. They do not govern the issuance of an operating license (a) where no formal adjudicatory proceeding has been conducted on the merits of the application for the license or (b) to the extent that some of the matters considered in the course of the staff review of the operating license application have been neither placed in issue before nor determined by the Licensing Board or Appeal Board in the formal adjudicatory proceeding which was conducted on the application. Further, these procedures will not apply to appellate decisions in cases where a complete initial decision has been issued by a Licensing Board before the effective date of this Statement of Policy, or to partial initial decisions not authorizing issuance of new permits or licenses.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1243, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Washington, D. C., this 5th day of November 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-34830 Filed 11-8-79; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y; Docket No. R-0050-B]

Bank Holding Companies and Change in Bank Control; Nonbank Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The United States Court of Appeals for the Fifth Circuit, in *Alabama Association of Insurance Agents, Inc.* v. *Board of Governors of the Federal Reserve System*, 533 F2d 224 (5th Cir. 1976); rehearing denied, 558 F2d 729 (5th Cir. 1977); *cert.* denied, 435 U.S. 904 (1978), remanded to the Board for further consideration that part of the Board's Regulation Y authorizing bank holding companies to act as agents or brokers with respect to general insurance sold in a community that has a population not exceeding 5,000 persons, 12 CFR 225.4(a)(9)(iii)(a). The Board published that provision, together with the provision of Regulation Y authorizing bank holding companies to sell insurance in towns with inadequate insurance facilities (12 CFR 225.4(a)(9)(iii)(b)) for public comment in accordance with the Court's opinion. 43 FR 23588 (1978).

The Board has considered all comments received and has determined that the sale of general insurance by bank holding companies in communities with populations not exceeding 5,000 is an activity "closely related" to banking within the meaning of section 4(c)(8) of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1843(c)(8). The Board also has determined that the regulatory language authorizing that activity was so broad as to permit remote insurance agency activities not intended to be authorized and the Board appropriately restricted the scope of that activity. Finally, the Board has found that the sale of insurance in communities having inadequate insurance facilities is not an activity "closely related" to banking within the meaning of the Act and has deleted that provision from Regulation Y.

EFFECTIVE DATE: December 5, 1979.

FOR FURTHER INFORMATION CONTACT: Richard M. Whiting, Senior Attorney (202/452-3779), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) The Fifth Circuit Court of Appeals remanded to the Board for further consideration that part of 12 CFR 225.4(a)(9) that authorized bank holding companies to engage in general insurance agency activities in communities with a population not exceeding 5,000. The Court instructed the Board to make further findings to establish whether that activity is closely related to banking within the meaning of the Act. Also, the Court instructed the Board to make findings directed toward determining whether the language of that provision permits remote insurance agency activities not intended to be authorized by the Act.

The Board solicited public comments in accordance with the Court's opinion regarding the provision of Regulation Y authorizing bank holding companies to conduct general insurance agency activities in communities with a population not exceeding 5,000 inhabitants. In addition, the Board solicited comments from the public regarding whether the activity as acting as general insurance agent in communities demonstrated to have inadequate insurance agency facilities is closely related to banking within the meaning of section 4(c)(8) of the Act.

The Board has considered all comments received and completed its review of 12 CFR 225.4(a)(9)(iii). No requests for a hearing were received by the Board. The Board now makes certain findings and adopts certain amendments to that portion of Regulation Y in order to conform it to the opinion of the Fifth Circuit Court of Appeals.

From the record, including public comments received, the Board has concluded that the sale of general insurance in communities with a population not exceeding 5,000 is an activity closely related to banking within the meaning of section 4(c)(8) of the Act.[1] In this connection, the Board notes that since 1916 national banks in fact have been authorized pursuant to 12 U.S.C. 92 to sell general insurance in communities having a population not exceeding 5,000. Additionally, it appears that state banks in approximately 34 states may conduct general insurance agency activities to the extent that national banks may engage in that activity and, in fact, many state banks are engaged in that activity. Moreover, the record shows that many commentators view the sale of general insurance in a small town to be a financial service similar to banking and that in small towns bankers often are the only persons qualified to provide insurance agency services. Finally, numerous commentators noted that the economic viability of banks located in small towns frequently depends upon the income derived from general

[1] The courts have set forth the following general guidelines for determining whether a proposed activity may be found by the Board to be closely related to banking: (1) Banks generally have in fact provided the proposed services; (2) banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed service; *or* banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *National Courier Association* v. *Board of Governors*, 516 F2d 1229 (D.C. Cir. 1975).

insurance agency activities and banking functions in some instances would not continue absent general insurance agency activities. Accordingly, the Board has concluded that the sale of insurance in communities having a population not exceeding 5,000 is an activity closely related to banking. Moreover, the Board notes that no evidence has been presented to contradict the Board's previous determinations that proposals approved under this provision were for activities closely related to banking and, that in each of these proposals, the public benefits outweighed possible adverse effects, as required by section 4(c)(8) of the Act.

The Board also considered whether the language authorizing bank holding companies to engage in general insurance agency activities was so broad as to permit remote insurance agency activities not permissible under the Act. Three relevant comments were received regarding this issue and the Board has concluded that the regulation ostensibly permits the pursuit of general insurance agency activities in small towns from offices in larger communities, the sale of general insurance in small towns referred from offices located in large communities. The Board believes that such activities were not intended for bank holding companies and has adopted language designed to eliminate such activities. Further, this language is intended to preserve the opportunity for bank holding companies subsidiaries to generate insurance agency income, generally allows small one and multi-bank holding companies the benefits of insurance agency income and generally eliminates larger one and multi-bank holding companies from engaging in the general insurance agency field. However, in considering this language the Board expressed concern regarding the apparent disparity of treatment between bank holding companies and their nonbank subsidiaries and national banks and their branches. Accordingly, the Board stated that in appropriate circumstances it would consider applications by a bank holding company to sell general insurance in small communities when that bank holding company also has a branch bank located in that same community. In such circumstances the Board will proceed on a case-by-case basis and the burden will be upon the bank holding company applicant to demonstrate that its proposal meets all the requirements of section 4(c)(8) of the Act.

In addition, the Board considered two relevant comments regarding the provision in Regulation Y authorizing the sale of general insurance in towns having inadequate insurance agency facilities. Both commentators noted that no basis in law or fact exists upon which to determine that such activity is "closely related" to banking within the meaning of section 4(c)(8) of the Act. The Board concurs with this conclusion and has deleted 12 CFR 225.4(a)(9)(iii)(b) from Regulation Y.

Also, the Board received several other comments in connection with its consideration of this provision. An overwhelming number of the commentators remarked that the sale of general insurance in small towns was a substantial convenience to and increased insurance agency competition in those communities. This information is relevant to the public benefits determination the Board must make; however, it is not relevant to the closely related determination that the Board must make under section 4(c)(8) of the Act and, therefore, is not within the factors to be considered by the Board. Other commentators recommended either lowering or raising the population level in 12 CFR 225.4(a)(9)(iii)(a). However, as the primary basis for the Board's determination that this activity is closely related to banking is that Congress authorized national banks by 12 U.S.C. 92 to sell general insurance in places of 5,000 population, the Board decided to reject those recommendations. Also, one commentator suggested that the Board adopt regulations similar to 12 U.S.C. 2 that would require income generated by insurance agency activity to be attributed directly to the bank rather than to the holding company. This comment is applicable to the sale of all types of insurance by bank holding companies pursuant to Regulation Y. The Board believes that this comment is more appropriately addressed in another manner and its staff presently is examining this issue. In addition, certain other comments were received by the Board that were of a general nature.

This regulation is issued pursuant to 5 U.S.C. 553, 12 CFR 262.2, and in accordance with the Board's Statement of Policy Regarding Expanded Rulemaking Procedures, 44 FR 3957. Since the regulation essentially is a reformulation of a regulation previously published for public comment, expedited rulemaking procedures were followed in issuing this regulation in accordance with the Board's Policy Statement.

(2) This action is taken pursuant to the Board's authority under section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8).

§ 225.4 Activities closely related to banking or managing or controlling banks.

(a) * * *

(9) Acting as insurance agent or broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to the following types of insurance:

* * * * * * *

(iii) Any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000 (as shown by the last preceeding decennial census): *Provided*, The principal place of banking business of the bank holding company is located in a community having a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, October 31, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-34685 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[Policy Statements Amendment No. 66 to Part 399; Docket 32934; PS-88]

Policy Statements; Implementing Executive Order 12044, Improving Government Regulations

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB adopts its final plan for implementing Executive Order 12044, *Improving Government Regulations.*

DATES: Adopted: November 1, 1979. Effective: November 1, 1979. The procedures described in this Policy Statement apply to rulemaking that begins after this date. They will also be adapted, to the extent practicable, to rulemaking that is already in progress.

FOR FURTHER INFORMATION CONTACT: Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: Executive Order 12044, *Improving Government Regulations*, directs Executive agencies to adopt procedures to ensure that their regulations are as simple and clear as possible, will achieve legislative goals effectively, and will not impose unnecessary burdens. Although the Executive Order by its terms does not apply to independent agencies like the Civil Aeronautics Board, the Board noted that it already complied with most of the Order's

provisions, pledged to comply voluntarily, and published a Notice of Request for Public Comments on its plans for implementing the Order (43 FR 29251; July 6, 1978) ("the Notice").

The Notice included (1) a description of the Board's existing procedure for developing regulations, (2) planned changes in those procedures to comply more fully with the Order, (3) proposed criteria for identifying "significant" regulations, (4) proposed criteria for determining whether to perform a regulatory analysis, and (5) a list of existing regulations that are being reviewed.

Comments were filed by American Airlines, Delta Air Lines, the Department of Justice (DOJ) Task Force on Sex Discrimination, and the law firm of Shaw, Pittman, Potts, and Trowbridge.

After considering these comments, we have decided to change our rulemaking procedures and adopt criteria for determining significance and when to perform regulatory analyses essentially as proposed. A discussion of the comments and the changes prompted by them follows. The new procedures are set out below. We are adding the criteria to our Policy Statements in 14 CFR Part 399. Finally, the status of existing regulations under review is updated in our regulatory agenda, also published today.

Discussion of the Comments

Delta suggested that we issue another notice to examine more carefully the need for changes in rulemaking procedures, to make sure that the changes yield genuine benefits instead of merely causing unnecessary delays. We see no need for another notice, however. The changes are relatively simple, and are designed to add time only when that is really necessary to give a proposal the careful consideration that it already merits.

The rest of the comments primarily addressed the criteria for determining significance and when regulatory analyses should be performed. American stated that the criteria are to vague, and suggested that these analyses be performed for all significant regulations. Delta stated that the Board should perform a regulatory analysis for all proposals that "might carry significant economic considerations," rather than "prejudge the issue of whether regulatory analyses should accompany proposals designed to deregulate certain aspects of air transportation."

We are not adopting these suggestions. This is not meant to imply that we are not sensitive to the need to consider carefully the economic effects of our regulations. To the contrary, we routinely analyze costs, benefits, and alternative approaches in all of our rulemaking. The depth and formality of these analyses have been commensurate with the importance of each rule. To perform a formal regulatory analysis as described in the Executive Order for all significant regulations, or even for all economically significant ones, is not only unnecessary but would unduly delay the rulemaking process. In any event, we are retaining the discretion to direct the staff to prepare a formal analysis for any proposal that is important enough to warrant it, regardless of whether the proposal is to decrease or increase regulation. Moreover, as we stated in the Notice,

> When it is clear on the face of a proposed rule that it will reduce the burden of Federal regulation, strict adherence to the new procedures could run directly counter to the purposes of the Order. "Regulatory analyses," therefore, would not necessarily be performed for proposals designed to *deregulate* an aspect of air transportation.

Delta's comment has not persuaded us to change this approach. Our view has been confirmed by the policies established by the Airline Deregulation Act of 1978. That Act virtually eliminates Board authority over domestic routes at the end of 1981 and over domestic rates at the beginning of 1983. In the meantime, we must act quickly to make sure that the transition to a deregulated air transportation system is achieved as smoothly as possible.

There were several specific suggestions on the criteria for significance. American stated that we ignored § 2(e)(1) of the Executive Order, which establishes "the type and number of individuals, businesses, organizations, State and local governments affected" as factors. Although these factors were incorporated in effect, if not by name, in the proposed criteria, §399.71(a) as adopted today includes specific references to State and local governments and to small communities, for emphasis. Moreover, since we are committed to a broad interpretation of "significant," disputes about whether a particular rule is a significant one are unlikely to arise. We are adopting Delta's suggestions that, in addition to expected effects on prices, a proposal's expected effects on costs, revenues, and Board procedures be considered. The DOJ Task Force suggested that any rule that will have a disparate impact based on sex be considered significant. We are adopting this suggestion, but with a slight change in wording since any rule is likely to have a "disparate impact" on persons of opposite sex in at least some trivial way. For example, the simplest reduction in record retention requirements may affect more women than men, if there are more women in clerical jobs.

Delta also suggested that a reference to major increases in revenues be added to the criteria for determining when to perform a regulatory analysis. We agree that a rule's effect on revenues is relevant to whether a regulatory analysis ought to be performed, but not in the way Delta has suggested. The only effect on revenues that should trigger the regulatory analysis requirement is a major decrease. This is reflected in §399.72(b).

The DOJ Task Force also called for the elimination of unnecessary and inappropriate gender-based terminology in both existing and new rules. We are already doing this to the extent practicable in our new rules and when existing rules are reviewed for some other reason. To review existing rules for the sole purpose of eliminating such gender-based terminology, however, does not appear to be an effective allocation of staff time or taxpayers' money.

American suggested that we make public any staff memoranda determining not to prepare a regulatory analysis, and reverse the staff if any person demonstrates that the staff analysis is invalid. The essential aspect of this suggestion is already a part of our procedures: The most important staff memoranda are the Memoranda for Board Action (MBA's), which point out important or controversial aspects of the actions they transmit. They are routinely released after the public meeting at which we act on the staff's recommendation. If an NPRM is issued without a regulatory analysis, any person may file a comment arguing that we have not adequately considered the need for a rule, cost, benefits, or alternative approaches. We remain free at all times to direct the staff to examine these factors further, whether through a formal regulatory analysis or otherwise.

Shaw, Pittman, Potts, and Trowbridge suggested that whenever we propose a significant rule, we publish the MBA in the Federal Register as an appendix to the NPRM. We always have the option to do this, and have done so on occasion when the MBA would be especially useful in highlighting issues for public comment. Since these documents are readily available to the public upon individual request, however, the marginal benefits of publishing them on a regular basis would not justify the cost, which is more than $300 per page.

Readers interested in obtaining a copy of an MBA may contact the person named in the "For Further Information" section of the NPRM or, preferably, the Office of the Secretary, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 673-5068.

The notice contemplated that when a regulatory analysis is prepared, either it would be published as an appendix to the NPRM or the NPRM would explain how interested persons could obtain a copy. Shaw, Pittman recommended that the analysis always be published as an appendix or, at the very least, that a thorough synopsis be published as an appendix. Automatic publication could prove to be expensive. We need make no special provision for a synopsis since in any rulemaking important enough to warrant a regulatory analysis, the discussion in the preamble would be thorough enough to constitute the synopsis that Shaw, Pittman requested.

Finally, Shaw, Pittman asked that we establish a service list in all rulemaking proceedings. The service list is a voluntary arrangement whereby each person on list agrees to send his or her comments to each other person on the list, in exchange for receiving those other comments. Our practice has been to establish a service list only for those NPRM's that invite both initial and reply comments. Since the usefulness of the service list is not limited to those cases and the arrangements are entirely voluntary, we have decided to adopt this recommendation.

Changes in the Board's Procedures for Developing Regulations

To comply more fully with the Executive Order the Board adopts the following changes in its procedures for developing regulations. These changes will be incorporated in the CAB Manual of internal procedures.

Identifying significant proposed regulations. As early as possible in the development of a proposed regulation, the office with initial responsibility for preparing the proposal will determine whether it is "significant." Criteria for making this decision are set out in 14 CFR 399.71 (see below). The determination will be made as soon as the office tentatively decides to go forward with a recommendation that the Board issue a notice of proposed rulemaking. In the case of a third-party petition for rulemaking, this recommendation will ordinarily be made shortly after receipt of other offices' views on the petition and answers.

If the proposal is found to be not significant. That fact will be noted in the draft NPRM. The Board will thus have an opportunity to review the finding. For proposed regulations that are issued under delegated authority, no finding need be made. It is implicit in the Order that significant proposals should not be issued under delegated authority. The delegation itself may be considered an advance finding by the Board that any proposal issued under it is not "significant."

If the proposal is found to be significant. (1) The office with initial responsibility will notify the Office of the Managing Director and the Associate General Counsel for Rules and Legislation of this finding, and provide them with necessary information so that the proposal can be placed on the Board's agenda of significant regulations under development or review. This information will include a brief description of the proposal and the need and legal basis for it. It will also include the name and telephone number of a knowledgeable Board official. The agenda will be published at least twice each year, ordinarily in May and November.

(2) The office with initial responsibility will notify the Board through a For Information Memorandum of its plans to develop a recommendation that the Board issue an NPRM. This memorandum will briefly inform the Board of the issues and alternative approaches that the staff expects to consider so that the Board can exercise early oversight of the development process. The memorandum need not be sent if the regulation has already been the subject of an ANPRM, if the draft NPRM is being prepared at the Board's direction, if the staff activity has already been discussed at a Board meeting, or if the Board is otherwise aware of that activity.

(3) The office with initial responsibility will transmit its finding of significance to the office most directly concerned with the substance of the rulemaking, if that is a different office, so that the proposal can be evaluated to determine whether a regulatory analysis will be performed.

(4) When the NPRM is issued, the Minutes Section of the Office of the Secretary will make sure that at least 60 days are allowed for public comments, unless the notice includes a statement that a shorter period is advisable and that the public benefits from expedited consideration outweigh any adverse effects of the shorter comment period. The Docket Section will establish a service list.

The decision whether to perform a regulatory analysis will be made in the first instance by the office that is most directly concerned with the substance of the regulation. Criteria for making this decision are set out in 14 CFR 399.72. The Office of Economic Analysis (OEA) will have an early opportunity to review the decision. This approach will combine the benefits of the concerned office's familiarity with the particular subject matter and OEA's expertise in regulatory analysis. The Board may also direct that a regulatory analysis be performed on any proposal regardless of whether the criteria are satisfied.

If a regulatory analysis is to be performed, the Director of OEA will assign a staff member to help the concerned office with quantitative aspects of the analysis. The concerned office prepares a draft regulatory analysis at the same time the office with initial responsibility prepares the draft NPRM. These two documents will be sent to the Board with the same MBA. The NPRM will briefly describe the alternatives considered in the draft regulatory analysis. The analysis will either be published as an appendix to the NPRM or be placed in the docket for the rulemaking proceeding. In the latter case, the NPRM will tell the public how to obtain a copy. A final regulatory analysis will be completed and made available to the public if the final regulation is published.

Regulatory analyses will contain:

(1) A succinct statement of the problem;

(2) A description of the major alternative ways of dealing with the problems that were considered;

(3) An analysis of the economic consequences of each of these alternatives; and

(4) A detailed explanation of the reasons for choosing one over the others.

Public participation. The Board has a program to give financial assistance to eligible applicants who (1) can be expected to contribute substantially to a full and fair resolution of the issues presented in a proceeding (whether rulemaking or not), and (2) cannot afford to participate effectively without compensation. Guidelines for this program are set out in 14 CFR Part 304, which was adopted by PR-181 (43 FR 56878; December 5, 1978). A pamphlet entitled "Applying for Compensation for Participation in CAB Proceedings" is available from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673-5442. For further information about this program, interested persons may contact Glen Robards, Jr., in the Office of the Managing Director, (202) 673-5189.

Final rules. When submitting any significant draft final rule to the Board,

the office with initial responsibility will provide enough discussion in the MBA or the preamble of the draft final rule to enable the Board to find that:

(a) The regulation is needed;

(b) The direct and indirect effects have been adequately considered;

(c) Alternative approaches have been considered and the least burdensome, most effective one has been chosen;

(d) Public comments on the NPRM have been fully considered and an adequate response has been prepared;

(e) The regulation is written in plain English and is understandable to those who must comply with it;

(f) An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance;

(g) The name, address, and telephone number of a knowledgeable agency official is included in the regulation; and

(h) There is a plan for evaluating the regulation after its adoption.

The office most directly concerned with the substance of the rulemaking, if that is a different office, will provide any additional background information that may be necessary to assist the office having initial responsibility in meeting this requirement.

Note.—These findings, in slightly different form, were set out in the Notice as prerequisites to an NPRM, in response to § 2(d) of the Executive Order. The Office of Management and Budget advises that the reference in that section to agency head approval before publication of a significant rule "for public comment" was in error, and that section 2(d) was intended to apply only to final rules. These procedures reflect that correction.

Sunset. These procedures will expire December 31, 1980, unless extended. This "sunset" provision will ensure that the procedures do not become permanent without an evaluation of their effectiveness.

Modifications. The procedures described here will ordinarily be followed when regulations are developed. The Board may, in its discretion, modify the procedures in particular instances. The failure to follow this format in whole or in part will not affect the validity or enforceability of the rule or be a ground for reconsideration or judicial review.

Exclusions. These procedures do not apply to:

(1) Regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);

(2) Regulations issued with respect to a military or foreign affairs function of the United States;

(3) Matters related to Board management or personnel, such as delegations of authority;

(4) Regulations that are issued in response to an emergency or that are governed by short-term statutory or judicial deadlines. In these cases, the Board will publish in the Federal Register a statement of the reasons why it is impracticable or contrary to the public interest to follow the procedures.

Amendment of Policy Statements

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 399, *Policy Statements*, as follows:

1. In the Table of Contents, Subpart F is retitled and new §§ 399.71 and 399.72 are added, to read:

* * * * *

Subpart F—Policies Relating to Rulemaking Proceedings

Sec.

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399.71 Criteria for identifying significant rules.

399.72 Criteria for determining whether a regulatory analysis will be performed.

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2. Subpart F is retitled as set forth above and amended by adding new §§ 399.71 and 399.72, to read:

§ 399.71 Criteria for identifying significant rules.

The Board will consider a proposed rule to be significant within the meaning of Executive Order 12044, *Improving Government Regulations*, if it satisfies any of the following criteria:

(a) It relates to a matter of significant concern to the President, Congress, State or local governments, small communities, or the public in general (especially if it is likely to generate much public comment);

(b) It appears likely to have a substantial effect on price, costs, revenues, quality of service, or competition in the field of air transportation;

(c) It appears likely to have a substantial effect on a particular class of users or suppliers of air transportation;

(d) It appears likely to impose heavy compliance or reporting burdens;

(e) It involves important Board policy that will require substantial resources to develop or enforce;

(f) It appears likely to have a substantial effect on the conduct of Board proceedings;

(g) It discriminates on the basis of sex; or

(h) It appears likely to have a substantial effect on the programs or requirements of other agencies.

§ 399.72 Criteria for determining whether a regulatory analysis will be performed.

A regulatory analysis will be performed for any proposed regulation that—

(a) Would have an annual effect on the economy of $100 million or more;

(b) Would result in a major increase in costs or prices or decrease in revenues for individual industries, levels of government, or geographic regions; or

(c) The Board, in its discretion, finds important or burdensome enough to warrant a regulatory analysis.

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324. Executive Order 12044, 43 FR 12661)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-34839 Filed 11-8-79; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 157

[Dockets Nos. RM79-37 and RM79-43]

Budget-Type Certificate Applications—Gas Purchase Facilities; Amendments to the Regulations Implementing the Natural Gas Act

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission expands the use of budget-type certificates for gas supply facilities by expanding the types of facilities eligible for such coverage and increasing the dollar limits for eligible facilities. The purpose and intended effect of this final rule is to decrease the administrative burden on the public and to facilitate more rapid increases in gas supplies for consumers.

EFFECTIVE DATE: December 1, 1979.

FOR FURTHER INFORMATION CONTACT: Frank Markulin, Office of Pipeline and Producer Regulation, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8859. Bob Nichols, Office of the General Counsel, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8141.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Charles B. Curtis, Chairman; Matthew Holden, Jr., and George R. Hall.

In the matter of Budget-type Applications: Gas Supply Facilities—Amendments to Scope of Existing Regulations, Docket No. RM79-37; Amendments to Subpart A, Part 157 of the

Regulations Implementing the Natural Gas Act, Docket No. RM79-43.

Order No. 56

Final Rule

Issued November 1, 1979.

The Federal Energy Regulatory Commission (Commission) amends § 157.7(b) of its regulations by changing the designation of "gas-purchase" facilities to "gas supply" facilities; increasing the maximum total annual and single project cost limitations for the construction of gas supply facilities; deleting the requirement of yearly filings of abbreviated applications; and changing the filing of completion reports under § 157.7(b) to a calendar-year basis. Under this final rule, "gas supply facilities" will include four types of facilities: (1) those necessary to connect gas supplies purchased from a producer or other similar seller; (2) those necessary to connect a pipeline's own production; (3) those necessary to connect gas acquired for system supply under sections 311 or 312 of the Natural Gas Policy Act of 1978, Pub. L. No. 95-621 (NGPA); and (4) certain facilities needed to transport or exchange natural gas. In doing this, the Commission is consolidating Docket Nos. RM79-37 and RM79-43.

A. Background and Description of Proposed Rule

Since its inception in 1956, the budget-type certificate has served an important function by permitting expeditious construction of minor facilities necessary to connect sources of natural gas to the system supply of jurisdictional pipelines. Traditionally, only minor, routine facilities have qualified for this procedure. The limits imposed upon facilities eligible for budget-type certification have limited the rate impact of facilities built under budget-type certificates. The Commission determined in 1956 that it was not in the public interest to require the imposition of the full certification procedures applicable under section 7(c) of the Natural Gas Act (NGA) for routine construction. The budget-type certificate procedure has accommodated both the purpose of the regulatory requirements imposed by section 7 of the Natural Gas Act and the need to enable pipeline companies to construct minor, routine facilities with a minimum regulatory burden.

However, changing circumstances have required a revision of the regulations applicable to budget-type certificates. Dollar limits for such certificates were last raised in 1975. Since then, construction costs have increased substantially. Moreover, prior to this rulemaking, budget-type proceedings were not available for facilities constructed by interstate pipelines to attach company-owned production. In addition, the Natural Gas Policy Act of 1978 permitted interstate pipelines to acquire surplus gas supplies from intrastate pipelines. Prior to the Interim Rule issued in Docket No. RM79-43,[1] however, facilities constructed to take that type of gas into system supply would not have been eligible for budget-type certification. Relatively minor facilities could make significant supplies of additional gas available from either company-owned production or NGPA sources if construction could take place in a timely manner.

1. Dollar Limits on Budget-Type Certificates

Docket No. RM79-37[2] proposed that the yearly, overall budget-type certificate limit be increased to the lesser of $20 million or 3 percent of the applicant's gas plant account (F.E.R.C. Account 101, Uniform System of Accounts Prescribed for Natural Gas Companies). The limit for applicants with Account 101 balances of less than $16⅔ million was raised to $500,000.

In addition, it was proposed that the limit for any single onshore project built under a budget-type certificate be raised to the lesser of 25 percent of the total amount of the abbreviated application or $2.5 million. The limit for offshore facilities was proposed to be increased to the lesser of $3.5 million or the total amount of the budget-type certificate.

2. Expanded Definition of "Gas Supply Facilities"

Docket No. RM79-37 also proposed the use of budget-type certificates for facilities used to connect company-owned production. Under the expanded definition of "gas supply facilities", budget-type certificates could be used whether the gas was acquired through company exploration, development and production, acquired in place, or developed and produced in conjunction with any other person.

The proposal also deleted the words "authorized by this Commission to make a sale of gas to a gas purchaser" which had previously qualified "independent producer or other similar seller." Since the NGPA allows certain sales without Commission authorization, it was proposed that the restrictive clause be deleted as no longer necessary.

After the rule in Docket No. RM79-37 was proposed, final regulations were issued to implement sections 311 and 312 of the NGPA.[3] An interim rule was issued in Docket No. RM79-43 to permit budget-type certification of facilities necessary to connect gas supplies acquired pursuant to section 311 or 312 authorization. Docket Nos. RM79-37 and RM 79-43 have been consolidated herein.

3. Requirement of Calendar Year Filings

Docket No. RM79-37 also proposed that all application for budget-type certificates be filed by October 1st of the year preceding the calendar year for which the certificate would be issued. This procedure was proposed so that completion reports filed at the end of each calendar year would provide a common data base for analysis in the on-going review of the dollar limits prescribed by § 157.7(b)(1).

B. Comments on Proposed Rule and Summary of Final Rule

1. Total Yearly Budget Certificate Limits. § 157.7(b)(1)(i)

Under § 157.7(b)(1)(i) as amended by this final rule, the dollar limit on the total amount of construction allowed each year under a budget-type certificate is the lesser of $20 million or 3 percent of the certificate-holder's gas plant account (Account 101). The yearly limit for companies having a gas plant account of less than $16⅔ million is $500,000.

Several comments stated that the limits specified in the proposed rule were insufficient. Two basic reasons were given for higher limits:

(1) Inflation has raised the cost of construction and will continue to do so;

(2) Constant dollar costs of facilities to gather a given volume of gas have increased dramatically for two reasons. First, more drilling is taking place in fringe areas. This requires more facilities to connect completed wells with existing pipeline systems. Second, pipelines now must attach more wells to secure a given volume of gas due to present smaller reservoir size and consequent lower production per well.

The comments suggested increasing the limit to $25 milion; raising it to the greater of $20 million or 3 percent of gas plant account; tying the limit to the Handy-Whitman Index; or having a 3 percent limit without a specific dollar

[1] "Amendments to Subpart A, Part 157 of the Regulations Implementing the Natural Gas Act"; Docket No. RM79-43, issued May 18, 1979.

[2] "Budget-type Applications: Gas Supply Facilities—Amendments to Scope of Existing Regulations"; Docket No. RM79-37, issued April 19, 1979.

[3] Order Amending Part 284 and Issuing Subparts A, B, C, and E as Final Regulations"; Docket No. RM79-75, issued August 30, 1979.

limitation. The Commission has decided that the limits in the proposed rule adequately take today's higher costs into consideration. However, increased costs are not the sole concern. Operational, environmental, and consumer rate impacts are also concerns that require periodic Commission review of these limits. Budget-type certificates are not intended to cover all or even a substantial part of a pipeline's construction. A straight 3 percent limit could make budget-type certification available for substantial portions of a pipeline's yearly construction activities, including the construction of non-routine facilities. The Commission must scrutinize the construction and operation of facilities that would significantly affect either a pipeline's operations or costs. We are satisfied that the limitations embodied in this order would permit timely construction of minor facilities while at the same time assuring Commission review of those facilities that could have a significant impact.

2. Single Project Limits § 157(b)(1)(ii)

This paragraph, as amended by this final rule, states that no single project may be constructed under a budget-type certificate if its cost is more than the limits specified. Under the rule proposed in Docket No. RM79-37, these limits would have related to the type of project being built and the total amount of the budget-type certificate granted. Under prior Commission practice, each budget-type certificate granted was for a specific dollar amount. The percentage factor in the onshore single project limit could easily be tied to the amount of the certificate. Under this final rule, the percentage factor in the single project limit will be tied to the certificate holder's total calendar year limit.

Several comments, while finding the $2.5 million onshore limit to be sufficient, argued that the $3.5 million limit for offshore facilities was insufficient for the following reasons:

(1) The increased length of offshore pipelines and higher costs attending their construction has increased the cost of any single project. As the search for new production goes farther offshore and wells must be drilled in deeper waters, connecting facilities must necessarily be laid in deeper environs. This presents technical and logistical problems that increase the cost of projects.

(2) The limits for onshore projects were proposed to be increased 66 percent while the limits for offshore facilities were proposed to be increased only 40 percent.

These comments suggested that the offshore limits be increased to amounts ranging from $3.5 million to $5 million. The Commission does not agree with these recommendations. Budget-type certificates are intended for minor facilities. Large projects are more likely to involve questions about adequacy of reserves, possible alternatives, adequacy of design, rate impact, and environmental factors that the Commission should review more thoroughly in full NGA section 7(c) proceeding. The $3.5 million limit defines the upper parameters of the cost of constructing offshore projects which will not significantly affect operating conditions or cost recovery.

3. Definition of "Gas Supply Facilities"—§ 157.7(b)(4)

Before the changes made in this docket; facilities constructed to attach natural gas purchased from independent producers or other similar sellers were eligible for budget-type certificates. Facilities built to connect gas supplies to be transported by an interstate pipeline for another interstate pipeline were also eligible for such certificates if the transportation was pursuant to prior Commission authorization. The proposed rules added two types of facilities to those eligible for such proceedings:

(1) Facilities necessary to connect company-owned production; and

(2) Facilities constructed to receive into system supply gas acquired by an interstate pipeline under NGPA section 211 and 312 authorization.

These additions brought within the definition of "gas supply facilities" any facility needed to attach gas supplies with the exception of facilities constructed to make purchases from: plants manufacturing synthetic gas; (2) plants gasifying LNG; or (3) another interstate pipeline's system supply.

a. *Facilities to effectuate transportation by one interstate pipeline for another interstate pipeline.* Some comments suggested that the definition be expanded to allow budget-type certification in circumstances where a seller must deliver gas to an intermediate interstate pipeline for the account of a purchasing interstate pipeline. These comments also requested that the Commission make transportation arrangements between interstate pipelines self-implementing. The authority for such transportation presently is authorized only after an NGA section 7 proceeding. Docket No. RM79-74 [4] proposes to make transportation by one interstate pipeline for another self-implementing.

Should that rulemaking be finally adopted, the present definition will allow budget-type certification for facilities constructed to effect that transportation. The operative language in the definition is "* * * or the system of another pipeline company authorized to transport gas for or exchange gas with that interstate pipeline * * *." See § 157.7(b)(4)(i). The facilities must be constructed under the budget-type certificate of the pipeline building and operating the facilities, whether that pipeline is the transporter or the final recipient. § 157.7(b)(6).

b. *"Other Similar Seller".* Some comments suggested that the words, "independent producer or other similar seller", unduly restricted the use of budget-type certificates. Under prior practice, the term "other similar seller" included purchases from producing subsidiaries or divisions of other pipelines and purchases from jurisdictional gatherers.

However, it did not include facilities constructed to facilitate the purchase of gas from another interstate pipeline's system supply. "Other similar seller" also excluded from coverage by budget-type certificates facilities constructed to make purchases from plants manufacturing synthetic gas and plants gasifying LNG.

These inclusions and exclusions are continued in this final rule. Under this rule, budget-type certificates may also be used to construct facilities to connect gas acquired for system supply from intrastate pipelines.

c. *Facilities to connect an interstate pipeline's own production.* No comment dealt directly with the provision other than to concur in its adoption. However, some of the comments regarding "other similar seller" mentioned categories that would be included in this portion of the expanded definition. Facilities eligible for budget-type certification include those facilities necessary to connect a pipeline's own production as well as the production of its affiliates.

d. *NGPA section 311 and 312 natural gas.* The comments received in Docket No. RM79-43 all supported the Commission's interim rule allowing budget-type certificates for facilities constructed to facilitate NGPA section 311(b) and 312 transactions. All of the commenters, however, read the interim rule as excluding facilities constructed for section 311(a) transportation from

[4] Interstate Pipeline Transportation on Behalf of Other Interstate Pipelines; Docket No. RM79-74, Issued August 27, 1979; 44 FR 51612 (9/4/79).

budget-type certificate coverage. The comments were most concerned about three types of facilities:

(1) Facilities constructed and operated by an interstate pipeline to receive into its system supply natural gas transported to it by an intrastate pipeline under section 311(a)(2);

(2) Facilities used by an interstate pipeline solely to attach or deliver gas supplies it is transporting pursuant to section 311(a)(1) authorization;

(3) Facilities constructed by an interstate pipeline to provide transportation between an interstate pipeline acquiring natural gas for its system supply and an intrastate pipeline providing NGPA section 311(a)(2) transportation for the purchaser.

The facilities described in paragraph (1) are subject to the Commission's NGA jurisdiction. All facilities constructed by an interstate pipeline are subject to the Commission's NGA jurisdiction unless specifically excluded by statute. Pursuant to section 601 of the NGPA, part 284 of these regulations excludes from NGA jurisdiction only those interstate pipeline facilities constructed to effectuate transportation on behalf of an intrastate pipeline or a local distribution company. Facilities constructed by an interstate pipeline to receive gas into system supply do neither. These facilities are eligible for budget-type certificate coverage under this final rule.

The facilities described in paragraph (2) are not subject to its NGA jurisdiction and would not require a section 7(c) certificate if the facilities were used *solely* for section 311(a)(1) transportation authorized by Commission rule or order. This is because that transportation is on behalf of an intrastate pipeline or LDC. Hence, there would be no need for coverage by the budget-type certificate procedure for these types of facilities.

As pointed out in Docket No. RM 79-75,[5] the facilities described in paragraph (3) may or may not be subject to the Commission's NGA jurisdiction. Under present Commission policy, those facilities are not subject to NGA jurisdiction if adequate nexus exists between the transporting interstate pipeline and the intrastate pipeline to render the transportation "on behalf of" the intrastate pipeline. If either title to the natural gas remains vested in the intrastate pipeline or an agency relationship exists between the intrastate pipeline and the transporting interstate pipeline during that transportation, the facilities to effect that transportation are not subject to the Commission's NGA jurisdiction. An NGA section 7(c) certificate would not be required for their construction and operation. Under this policy, the facilities are subject to the Commission's NGA jurisdiction if both title nexus and the agency relationship are between the two interstate pipelines and there is no other evidence that the transaction is on behalf of an intrastate pipeline. Such jurisdictional facilities are eligible for budget-type certificate coverage.

Of course, facilities constructed by an intrastate pipeline to connect natural gas to be transported by it under section 311(a)(2) authorization would be nonjurisdictional.[6]

Section 284.003 states that the NGA jurisdiction of this Commission does not apply to any transportation, sale, or assignment of natural gas in interstate commerce if that transaction is authorized pursuant to NGPA section 311 or 312. To be so authorized a transaction must comply with Part 284 of these regulations or be authorized by a particular Commission order. A more complete analysis of these jurisdictional issues may be found in Order No. 46.[7]

Parties wishing to determine whether a particular transaction meets the requirements of section 311(a) may request an interpretation from the Commission under the provisions of § 1.42.

e. *The definition of "gas supply facilities" in the final rule.* § 157.7(b)(4). After consolidation of Docket Nos. RM79-37 and RM79-43, it was apparent that all facilities necessary to connect gas supplies were included in the respective definitions except the three types mentioned previously. Facilities to attach a company's own production were covered in Docket No. RM79-37. Facilities to attach gas acquired for system supply pursuant to NGPA section 311(b) and 312 authorization were covered in Docket No. RM79-43. Facilities necessary to bring into system supply natural gas transported to a pipeline pursuant to NGPA section 311(a)(2) authorization would have been either (1) purchased from an independent producer or other similar seller; (2) acquired from an intrastate pipeline pursuant to section 311(b) or 312 authorization; or (3) part of the recipient's own production. Facilities "necessary to connect" such gas supplies are not limited to those which directly connect the recipient and the source of gas.

The definition of gas supply facilities in this final rule therefore includes any facility necessary to connect the system of an interstate pipeline company, or the system of another pipeline company authorized to transport gas or exchange gas with that interstate pipeline, to natural gas supplies destined for the system supply of that interstate pipeline company. § 157.7(b)(4)(i).

Gas supply facilities do not include facilities built to effect the acquisition of gas from another pipeline's system supply or from plants manufacturing synthetic gas or gasifying LGN. § 157.7(b)(4)(ii).

This simplification of the definition is merely editorial. The change in wording does not exclude from coverage any facility covered under the prior regulations, the rule proposed in Docket No. RM79-37, or the Interim Rule issued in Docket No. RM79-43.

4. Filing of Applications and Completion Reports—§§ 157.5(b) (3) and (5)

Several comments requested that the Commission allow government fiscal year filing of budget-type applications or that applicants be given a choice between fiscal year or calendar year filing. The Commission has decided that one yearly period is needed so that the completion reports will form a year-to-year data base for analysis in the periodic § 157.7(b)(1) limit revisions.

However, the Commission does agree that the yearly filing of budget-type applications is unnecessary. Budget-type certificates will now be granted for an indefinite time. Interstate pipeline companies may continue to construct facilities under their budget-type certificates as long as the conditions, limits, definitions and reporting requirements of § 157.7(b) are met. Paragraph (b)(5) of this section covers the filing of applications. Should a company decide to terminate its budget-type certificate, it should request such a termination in its last completion report.

Completion reports for each calendar year during which a company has a budget-type certificate are still required. These reports are due by March 1st of the following year.

Some comments suggested that the amount of information required on the completion reports be reduced or that the time period for filing be extended to 90 days after the end of the year. We disagree with these comments. All of the information requested is necessary to the preparation of a data base of sufficient breadth and depth to allow a valid determination of any necessary modification of limits. This information is also necessary to the Commission's oversight function. The data supplied in

[5] *Id.*, note 3.

[6] NGPA section 601; Docket No. RM79-75, supra, note 3.

[7] *Id.*, note 3.

the completion reports must be broken down on a project by project basis. If this information is collected and recorded at the completion of each project, there should be no problem with meeting the March 1 deadline.

Although the Commission finds that use of the budget-type certificate is appropriate with respect to NGPA section 311 or 312 facilities, it wishes to monitor the use of that procedure for this area. Notice must be given to the Commission within 10 days of the commencement of use of any NGPA section 311 or 312 facility constructed under a budget-type certificate which has a cost associated with it of more than either $50,000 or 1 cent per MMBtu.

This notice should include only the cost of the facilities, the duration of the transaction, and the number of MMBtu of gas being purchased, assigned, or transported during the duration of the transaction. The information required by paragraph (b)(3) of this section should be included in the completion report for the calendar year of construction.

Several comments requested that short-term budget certificates should be available to those applicants who, in the middle of the year, need to construct facilities that were not anticipated by the previous October 1st. Since yearly filings of abbreviated applications are no longer required, this does not present a problem. Companies which do not have an outstanding budget-type certificate may apply for one at any time. Companies now holding valid budget-type certificates should apply for a new, rollover certificate at least 60 days before the lapse of the existing certificate.

Companies holding budget-type certificates granted for a one year period prior to the effective date of this rule should file a completion report for that certificate period within 60 days of its expiration. This report should comply with § 157.7(b)(3) as amended by this rule.

These companies, as well as companies applying for a budget-type certificate for the first time, will probably be granted certificates during the middle of a calendar year. The total dollar limit (the lesser of $20 million or 3% of gas plant account) for construction during the remainder of that first calendar year will be reduced to an amount which bears the same proportion to the limit specified in § 157.7(b)(1)(i) as the number of months remaining in that first calendar year bears to 12.

A completion report for the first year of construction under the budget-type certificate must be filed by March 1st of the following year. This completion report should bear clearly on its face notice that it is for a partial year. Thereafter, completion reports will be filed each March 1st for the preceding calendar year.

5. The Transitional Rule—§ 157.7(b)(7)

The transitional rule originally provided for the length and total amount of budget-type certificates granted prior to January 1, 1981. Since such certificates are now being granted for an indefinite period, there is no need for most of that provision. However, there is still the need to provide for the yearly limits and filing of completion reports for companies not now on a calendar year basis and for companies initially granted a certificate in the middle of a calendar year. These provisions are included in § 157.7(b) and (7) of the final rule.

There were many suggestions that the broader definition and higher limits be made applicable to existing certificates for construction commenced after the effective date of the Natural Gas Policy Act. We agree with these suggestions in part. The appropriate changes are embodied in the transitional rule.

The higher limits allowed by this rulemaking will not apply to existing certificates. These limits will apply to budget-type certificates granted after the effective date of this rulemaking.

Certificates existing on the effective date of this rule will expire on their respective termination dates. Certificates granted after the effective date of this rule will be for an indefinite period, subject to the Commission's reservation of the right to revoke such a certificate at any time.

The construction of facilities to connect an interstate pipeline's own production may be done under existing certificates, but only as to construction commenced after the effective date of this order.

The construction of jurisdictional facilities used to facilitate NGPA section 311 or 312 transactions may be done under existing certificates, but only as to construction commenced after May 18, 1979, the effective date of the interim rule issued under Docket No. RM79-43.

6. Deletion of § 2.58

Section 2.58 of the Commission's regulations, entitled "Budget-type certificate applications—gas purchase facilities", merely repeats the provisions of § 157.7(b). For this reason, this section of the regulations is being deleted.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.;* Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.;* Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.;* E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 2 of Subchapter A, Chapter I, Title 18, Code of Federal Regulations and Part 157 of Subchapter E, Chapter I, Title 18, Code of Federal Regulations are amended as set forth below, effective 30 days from issuance of this order.

By the Commission.

Kenneth F. Plumb,

Secretary.

§ 2.58 [Deleted]

1. The table of sections for Part 2 is amended by deleting the entry for § 2.58.

2. Part 2 of Subchapter A is amended by deleting § 2.58 in its entirety.

3. Section 157.7 is amended in paragraph (b) by revising the title, the introductory paragraph, and subparagraphs (1), (2), (3), and (4) and by adding subparagraphs (5), (6), and (7) to read as follows:

§ 157.7 Abbreviated applications.

* * * * *

(b) *Gas supply facilities—budget-type certificates.* Interstate pipeline companies holding budget-type certificates may construct and operate minor, routine gas supply facilities thereunder, subject to the following conditions:

(1)(i) The total cost of the gas supply facilities constructed during any calendar year under the certificate shall not exceed 3 percent of the applicant's gas plant (Account 101, Uniform System of Accounts Prescribed for Natural Gas Companies) or $20 million, whichever is less; except that a company with less than $16⅔ million in its gas plant account may construct facilities having a total cost of up to $500,000.

(ii) The total cost of any single onshore project constructed under the budget-type certificate shall not exceed the lesser of 25 percent of the certificate-holder's total calendar year dollar limit or $2.5 million.

(iii) The cost of any single offshore project constructed under the budget-type certificate shall not exceed the lesser of $3.5 million or the certificate-holder's calendar year dollar limit.

(iv) Notwithstanding paragraph (b)(2)(ii), the single project limit for onshore projects constructed by a certificate-holder having a total calendar year dollar limit of $2 million or less shall be $500,000.

(2) Any company proposing the construction of facilities having a total cost in excess of the amounts specified in § 157.7(b)(1) shall file an application requesting a waiver of its provisions. Such an application will be granted only for good cause shown.

(3)(i) The certificate-holder shall file with the Commission by March 1 of the

year following each calendar year during which it has a budget-type certificate in effect a statement, in writing and under oath, for each individual project constructed under the budget-type certificate which contains the following information:

(A) A description of the gas supply facilities installed, including a description of the length and size of pipelines, compressor horsepower, metering facilities, taps, valves, and any other facilities constructed;

(B) The specific location of the gas supply facilities installed;

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

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

(E) The names of the fields connected;

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

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

(H) A statement clearly reflecting whether the report is for a full calendar year or a partial year if the report is for the certificate-holder's first budget-type certificate year.

(I) The amount of the certificate-holder's gas plant account (Account 101), as well as its computation of its calendar year and single project dollar limits.

(J) The purpose for constructing the facilities, specifically stating if the facilities were constructed for a transaction authorized under section 311 or 312 of the Natural Gas Policy Act and Part 284 of this chapter;

(K) If no construction took place under the certificate, a statement to that effect;

(L) Whether or not it wishes to terminate its budget certificate authority for years thereafter.

(ii) Within 10 days of the commencement of use of any facility necessary to connect gas assigned, sold, of transported pursuant to section 284 self-implementation authority which has costs associated with it of more than the greater of $50,000 or 1 cent per MMBtu, a budget-type certificate holder shall file with the Commission notice of such construction. This notice should include the cost of the facilities, the duration of the transaction, and the number of MMBtu of gas being purchased, assigned, or transported during the duration of the transaction. The completion report required by § 157.7(b)(3)(i) shall include the details of that project.

(iii) Completion reports due for partial calendar years shall be filed by March 1st of the following calendar year. The total calendar year dollar limit for construction during such a partial calendar year shall bear the same proportion to the certificate-holder's § 157.7(b)(1)(i) limit as the number of months in the partial calendar year bears to 12.

(4)(i) For purposes of this paragraph, "gas supply facilities" means minor, routine facilities, subject to the Natural Gas Act jurisdiction of this Commission, which are necessary to connect the system of an interstate pipeline company, or the system of another pipeline company authorized to transport gas for or exchange gas with that interstate pipeline company, to natural gas supplies destined for the system supply of that interstate pipeline company.

(ii) Gas supply facilities do not include facilities constructed to effect the purchase of gas from an interstate pipeline's system supply, from plants manufacturing synthetic gas or from plant's gasifying LNG.

(5)(i) A budget-type certificate authorizing the construction of minor, routine gas supply facilities subject to the limits, conditions, and reporting requirements of this chapter will be granted when an abbreviated application is filed.

(ii) Thereafter, the certificate-holder may continue to construct facilities under that budget-type certificate as long as it complies with the definitions, limits, conditions, and reporting requirements set forth in these regulations.

(iii) A budget-type certificate may be revoked by this Commission at any time.

(6) Gas supply facilities must be constructed and reported under the budget-type certificate of the person which will actually construct and operate those facilities.

(7)(i) A completion report due on budget-type certificates issued before December 1, 1979 shall be filed within 60 days of the expiration of the period for which it was granted.

(ii) Applications for certificates under these transitional rules by persons holding budget-type certificates on the effective date of this order shall be made at least 60 days before the lapse of the existing certificate.

(iii) Facilities constructed to connect a certificate-holder's own production may be constructed under existing certificates only if construction is commenced after December 1, 1979.

(iv) Facilities constructed to facilitate transactions authorized under sections 311 and 312 of the Natural Gas Policy Act may be constructed under existing certificates only if construction is commenced after May 18, 1979.

(v) The date of commencement of construction of any facilities constructed under § 157.7(b)(7) (iii) and (iv) under certificates existing on or before the effective date of this rule shall be included in the completion report for that certificate by § 157.7(b)(7)(i).

* * * * *

[FR Doc. 79-34879 Filed 11-8-79; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 880

[Docket Number R-79-663]

Section 8 Housing Assistance Payments Program for New Construction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Notice of suspension of enforcement.

INFORMATION: On October 15, 1979 the Department amended in its entirety the regulation for the Section 8 Housing Assistance Payments Program for New Construction, to be effective November 5, 1979 (44 FR 59408).

Subsequently, concern has been expressed to the Department regarding the provision in this regulation which requires advanced marketing to low- and moderate-income persons from impacted jurisdictions. (Set forth with other requirements in § 880.601(a)(3).) This concern has raised a question over the nature and extent of this requirement and its relation to other aspects of the Section 8 New Construction program. The Department, therefore, is suspending enforcement of this requirement pending the issuance of a clarification.

The suspension is effective on November 5, 1979, the effective date of the amended regulation. The Department expects to issue a clarification within 30 days.

EFFECTIVE DATE: November 5, 1979.

Issued at Washington, D.C., November 2, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-34651 Filed 11-8-79; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-79-735]

Section 8 Housing Assistance Payments Program—Existing Housing; Special Procedures for Moderate Rehabilitation Program

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim Rule and Request for Comments.

SUMMARY: The final regulations for the Section 8 Housing Assistance Payments Program—Existing Housing; Special Procedures for Moderate Rehabilitation Program which were published on Friday, May 4, 1979 at 44 FR 26660 omitted the citation of the legislative authority for the program. This omission being corrected.

Additionally, the requirements for sending invitations are being amended to delete specific reference to Housing Assistance Plan (HAP) goals and state that invitations must be consistent with requirements of 24 CFR Part 891. Part 891 covers the allocation of assisted housing.

EFFECTIVE DATE: December 10, 1979.

COMMENT DUE DATE: Written comments and suggestions will be received until January 8, 1980. Based on comments received, HUD will make modifications as appropriate in the final regulations. Comments should be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. A copy of each comment will be available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Cheryl D. Patton, Housing Programs Specialist, Moderate Rehabilitation Division, Office of Existing Housing and Moderate Rehabilitation, Department of Housing and Urban Development, Washington, D.C. 20410 (202) 755-6596. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Final regulations for the Section 8 Moderate Rehabilitation Program were published on May 4, 1979. These regulations omitted the citation of legislative authority for the program. That omission is being corrected by amending the final regulation to include the citation.

Additionally, § 882.502(a) is being amended to delete specific reference to consistency with Housing Assistance Plan goals and to substitute a reference to 24 CFR Part 891. This amendment is being accomplished to allow greater flexibility in the invitation of Moderate Rehabilitation applications and to made it clear that allocation of funds and invitations for applications must be consistent with the regulations in Part 891 governing these actions. Several comments have been received from local governments and Public Housing Agencies criticizing the requirement that in order for an area to be invited to submit a Moderate Rehabilitation application in Fiscal Year 1980, the HAP for the area must specify a goal for Moderate Rehabilitation. The comments suggested that since many HAPs were developed prior to the implementation of the Moderate Rehabilitation Program, a number of localities which would be interested in applying for the program in Fiscal Year 1980 did not include a goal for Moderate Rehabilitation in their HAP.

To allow these localities to apply for Moderate Rehabilitation in Fiscal Year 1980 without a HAP amendment, the regulations are being amended to refer to 24 CFR Part 891. Part 891 is currently silent on Moderate Rehabilitation and the Moderate Rehabilitation Program will be considered a part of the Existing Housing Program for purposes of allocations, inviting applications and determining HAP consistency. However, subject to the provisions of Part 891, allocations and application approvals under the Moderate Rehabilitation Program will be consistent with local objectives as expressed in local government consultation with HUD field offices and also as contained in overall HAP strategies.

Since these amendments are being made to correct an omission and as a response to public comments and in order to avoid unnecessary delay in the allocation of Section 8 contract authority in Fiscal Year 1980, it has been determined that these regulations should be published as interim regulations for effect. Additional public comments are, however, being solicited on the change to § 882.502(a).

HUD has made a Finding of Inapplicability respecting the National Environmental Policy Act of 1969 in accordance with HUD procedures. A copy of this finding of inapplicability is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C.

Accordingly, 24 CFR Part 882 is amended as follows:

1. After the Table of Sections for Subparts D and E, the following is added:

Authority: Section 8(e)(5) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(e)(5)) and Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. Section 882.502(a) is revised to read:

§ 882.502 Invitations for moderate rehabilitation program applications.

(a) Sending of Invitation. The HUD field office must initiate implementation of its program with respect to Moderate Rehabilitation by sending invitations for Moderate Rehabilitation Program applications for areas in the field office's jurisdiction where the field office has determined that the Moderate Rehabilitation Program would be appropriate, consisent with requirements of 24 CFR Part 891. These invitations may solicit applications for both the Existing Housing Program and Moderate Rehabilitation Program or may request only Moderate Rehabilitation applications. These invitations must be distributed in the same manner as specified in § 882.203(a).

Issued at Washington, D.C., September 21, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 79-34650 Filed 11-8-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7654; EE-30-78]

Income Tax; Collectively Bargained Plans and Plans Maintained By More than One Employer

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to qualified retirement plans which are collectively bargained or maintained by more than

one employer. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974. These regulations provide necessary guidance to the public for compliance with the law, and affect all employees covered by those plans.

DATE: The regulations are effective for plan years beginning after December 31, 1953. In applying some of the regulations to plan years beginning before certain changes under the Employee Retirement Income Security Act of 1974 are effective, several transitional effective date rules are provided.

FOR FURTHER INFORMATION CONTACT: Kevin W. Cobb of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 29, 1978, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 413 of the Internal Revenue Code of 1954 (43 FR 38602). The amendments were proposed to conform the regulations to section 1014 of the Employee Retirement Income Security Act of 1974 (88 Stat. 924). A public hearing was held on January 18, 1979. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Statutory Provisions

Section 413(a) of the Code describes certain plans, and their related trusts, which are maintained pursuant to certain collective bargaining agreements between employee representatives and employers. Section 413(b) of the Code prescribes certain rules which are applicable to the plans described in section 413(a) of the Code. Section 413(c) of the Code prescribes certain rules which are applicable to a plan maintained by more than one employer.

Definition of Plan

The final regulations define the plan as a "single plan" within the meaning of section 414(l) of the Code, pertaining to plan mergers, consolidations, etc. Under that section, the test of a single plan is whether, on an ongoing basis, all of the plan assets are available to pay benefits to employee participants and their beneficiaries.

Application of Section 413(b)

The final regulations provide rules under section 413(b) applicable to collectively bargained plans described in section 413(a). The final regulations make it clear that the qualification of these plans is determined with respect to all employers maintaining the plan. This test is unchanged from the proposed regulations.

In general, the status of a plan is determined on a unitary basis. Thus, the final regulations provide that a collectively bargained plan is qualified on a unitary basis. Further, failure to satisfy an applicable requirement for qualification, even if that requirement is tested by applying the requirement to specific employers rather than participating employers in the aggregate, may result in disqualification of the plan for all participating employers.

Several commentators suggested this qualification provision for collectively bargained plans is unduly harsh because the disqualifying event by a single employer may be beyond the control and knowledge of the other participating employers. The commentators requested a safe harbor be established in the final regulations to limit disqualification to the offending employers where the other employers satisfy the requirements.

The final regulations retain the concept of a single plan regarding qualification, and do not adopt a safe harbor. The treatment of a collectively bargained plan as a single plan, wherein all employees who are parties to the plan shall be treated as employed by a single employer, is based on section 413(b) of the Code. Participating employers treated as a single employer under section 413(b) must individually meet the applicable qualification requirements under section 401(a) which are not modified by section 413(b) and regulations thereunder. This requirement is not new. *See* Rev. Rul. 69-250, 1961-1 C.B. 116, which updated and restated the position set forth in P.S. No. 14, dated August 24, 1944. Qualification of these plans under section 401(a) has always been tested on a unitary basis with each employer also required to satisfy the qualification provisions. Further, the instances where the employers are tested individually, so that disqualification because of one employer's actions could arise, are relatively few. For example, section 413(b)(8) and § 1.413-(1)(i) provide that employees of employee representatives (or of the plan) may be properly covered under a multiemployer plan subject to section 413(b) provided the employee representative, considered individually, complies with the nondiscrimination requirements of section 401(a)(4) and the minimum participation and coverage requirements of section 410 with respect to their employees.

However, in the rare case of total disqualification, hardship could result to the offending and nonoffending employers maintaining the plan. Although no exceptions to total disqualification are provided in the final regulations, it is expected the Service's administration of these provisions may shelter innocent and nonnegligent employers from some of the harsh results of disqualification. Accordingly, in a proper case, the Commissioner could retain the plan's qualified status for innocent employers by requiring corrective and remedial action with respect to the plan such as allowing the withdrawal of an offending employer, allowing a reasonable period of time to cure a disqualifying defect, or requiring plan amendments to prevent future disqualifying events.

Application of Termination Rules

The final regulations under § 1.413-1(c)(3) provide rules which relate to vesting required in the case of a termination, partial termination, or complete discontinuance of contributions. Under the final regulations these rules are applied as if all participants subject to the same benefit computation formula and employed by employers who are parties to the collective bargaining agreement are employed by a single employer.

One commentator expressed concern over the application of proposed regulation § 1.413-1(c)(3) to large multiemployer plans which contain numerous benefit computation formulas. The commentator suggests a partial termination should not occur from the withdrawal of employees from one benefit computation formula and shifting to another benefit computation formula under the same plan as a result of renegotiation of collective bargaining contracts. Under the partial termination rules of § 1.413-1(c)(3) of the final regulations, the facts and circumstances will be determinative. The withdrawal of a group of employees by shifting from one benefit computation formula to another is not necessarily a partial termination under the facts and circumstances test.

Employees of Labor Unions and Plans

Section 1.413-1 (i)(1) of the proposed regulations provided that employees of employer representatives, or of a plan, are treated as employees of an employer maintaining such plan if certain requirements are satisfied. Several commentators suggested that employees

of an affiliated multiemployer health or welfare plan be entitled to coverage under the multiemployer pension plan. This suggestion has been adopted in the final regulations. Under the final regulations pension coverage may be provided for employees of any affiliated health or welfare plan which covers the same membership as the pension plan and which is maintained under the same collective bargaining agreement. Each such plan must separately satisfy certain requirements.

Application of Section 413(c)

Section 413(c) of the Code and § 1.413-2 of the final regulations provide rules relating to plans maintained by more than one employer. In general, although some of the requirements governing qualification of these plans are similar to the qualification requirements governing collectively bargained plans under section 413(b) and § 1.413-1 of the final regulations, there are more qualification requirements that are applied separately to specific employers maintaining these plans than the section 413(b) plans. However, as with collectively bargained plans under section 413(b), plans subject to section 413(c) must be a "single plan" under section 414(l) and must qualify on a unitary basis. Further, total disqualification of the section 413(c) plan may result if an applicable qualification requirement is not satisfied, irrespective of whether the requirement tests participating employers on a unitary or individual basis.

Further, as suggested, the final regulations under § 1.413-2 include a nonsubstantive modification which has changed "multiple employer plans" to "section 413(c) plans" to provide clarity.

Drafting Information

The principal author of this regulation is Kevin W. Cobb of the Employee Plans and Exempt Organizations 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.

Adoption of amendments to the regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are hereby adopted subject to the changes set forth below:

Paragraph 1. Section 1.413-1, as set forth in paragraph 1 of the notice of proposed rulemaking, is changed by adding new examples (4) and (5) to paragraph (c)(5) to read as follows:

§ 1.413-1 Special rules for collectively bargained plans.

* * * * *

(c) *Discrimination, etc.* * * *

(5) *Examples.* * * *

Example (4). Plan A is a defined benefit plan that provides for two normal retirement benefits, X and 2X. A participant receives benefit X if the collective bargaining agreement covering his employment provides for a contribution rate, M. If such agreement provides for a contribution rate of N, the participant receives benefit 2X. Benefit X and benefit 2X constitute separate benefit computation formulas.

Example (5). Plan B is a defined benefit plan that provides for a normal retirement benefit, X. Benefit X is provided for all plan participants even though there are two collective bargaining agreements providing for different contribution rates, M and N. Plan B has a single benefit computation formula, even though there are two contribution rates.

* * * * *

Par. 2. Section 1.413-1, as set forth in paragraph 1 of the notice of proposed rulemaking, is changed by revising paragraph (i)(1) to read as follows:

§ 1.413-1 Special rules for collectively bargained plans.

* * * * *

(i) *Employees of labor unions*—(1) *General rule.* For purposes of section 413(b) and this section, employees of employee representatives shall be treated as employees of an employer establishing and maintaining a plan to which section 413(b) and this section apply if, with respect to the employees of such representatives, the plan satisfies the nondiscrimination requirements of section 401(a)(4) (determined without regard to section 413(b)(2)) and the minimum participation and coverage requirements of section 410 (determined without regard to section 413(b)(1)). For purposes of the preceding sentence, the plan and any affiliated employee health or welfare plan shall be deemed to be an employee representative. If employees of employee representatives, the plan, or an affiliated employee health or welfare plan are covered by the plan and are not treated as employees of an employer establishing and maintaining the plan under the provisions of this paragraph, the plan fails to satisfy the qualification requirements of section 401(a). In addition, in order for such a plan to be qualified, the plan must satisfy the requirements of section 413(b) (1) and (2), relating to participation and discrimination, respectively; see paragraphs (b) and (c) of this section. For purposes of this paragraph, an affiliated health or welfare plan is a health or welfare plan that is maintained under the same collective bargaining agreement or agreements, and that covers the same membership.

* * * * *

Par. 3. Section 1.413-2 as set forth in paragraph 2 of the notice of proposed rulemaking is changed by striking out in each place it appears "multiple employer plans" and inserting in lieu thereof "section 413(c) plans".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: November 1, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury.

Paragraph 1. Section 1.413-1 is amended by adding new paragraphs (a), (c), (d) and (i) to read as follows:

§ 1.413-1 Special rules for collectively bargained plans.

(a) *Application of section 413(b) to certain collectively bargained plans*—(1) *In general.* Section 413(b) sets forth special rules applicable to certain pension, profit-sharing, and stock bonus plans (and each trust which is a part of such a plan), hereinafter referred to as "section 413(b) plans", described in paragraph (a)(2) of this section. Notwithstanding any other provision of the Code, a section 413(b) plan is subject to the special rules of section 413(b) (1) through (8) and paragraphs (b) through (i) of this section.

(2) *Requirements.* Section 413(b) applies to a plan (and each trust which is a part of such plan) if the plan is a single plan which is maintained pursuant to one or more agreements which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers. A plan which provides benefits for employees of more than one employer is considered a single plan subject to the requirements of section 413(b) and this section if the plan is considered a single plan for purposes of applying section 414(*l*) (see § 1.414(*l*)-1(b)(1)). For purposes of determining whether one or more plans (or agreements) are a single plan, under sections 413(a) and 414(*l*), it is irrelevant that there are in form two or more separate plans (or agreements). For example, a single plan will be considered to exist where agreements are entered into separately by a national labor organization (or one or more local units of such organization), on one hand, and individual employers, on the other hand, if the plan is considered a single plan for purposes of applying section 414(*l*).

(3) *Additional rules and effective dates.* (i) If a plan is a section 413(b) plan at a relevant time, the rules of section 413(b) and this section apply,

and the rules of section 413(c) and § 1.413–2 do not apply to the plan.

(ii) The qualification of a section 413(b) plan, at any relevant time, under section 401(a), 403(a), or 405(a), as modified by sections 413(b) and this section, is determined with respect to all employers maintaining the plan. Consequently, the failure by one employer maintaining the plan (or by the plan itself) to satisfy an applicable qualification requirement will result in the disqualification of the plan for all employers maintaining the plan.

(iii) Except as otherwise provided, section 413 (a) and (b) and this section apply to a plan for plan years beginning after December 31, 1953.

* * * * *

(c) *Discrimination, etc.*—(1) *General rule.* Section 401(a)(4) (relating to prohibited discrimination) and section 411(d)(3) (relating to vesting required on termination, partial termination, or discontinuance of contributions) shall be applied as if all the participants in the plan, who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement, are employed by a single employer.

(2) *Application of discrimination rules.* Under section 401(a)(4) and the regulations thereunder a plan is not qualified unless the contributions or benefits provided under the plan do not discriminate in favor of officers, shareholders or highly compensated employees (hereinafter referred to collectively as "the prohibited group"). The presence or absence of such discrimination under a plan to which this section applies at any time shall not be determined on an employer-by-employer basis, but rather by testing separately each group of employees who are subject to the same benefit computation formula to determine if there is discrimination within such group. Consequently, discrimination in contributions or benefits among two or more different groups or among employees in different groups covered by the plan may be present without causing the plan to be disqualified. However, the presence of prohibited discrimination within one such group will result in the disqualification of the plan for all groups. Section 401(a)(4) and the regulations thereunder provide rules relating to the determination of which employees are members of the prohibited group and to the determination of discrimination in contributions or benefits which are applicable to a plan to which this section applies. The determination of whether or not an individual employee is a highly compensated employee shall be based on the relationship of the compensation of the employee to the compensation of all the other employees of all employers who are maintaining the plan and have employees covered under the same benefit computation formula, whether or not such other employees are covered by the plan or are covered under the same benefit computation formula, rather than to the compensation of all the other employees of the employer of such individual employee.

(3) *Application of termination, etc. rules.* Section 411(d)(3) and the regulations thereunder (relating to vesting required in the case of a termination, partial termination, or complete discontinuance of contributions) apply to a plan subject to the provisions of this section. The requirements of section 411(d)(3) shall be applied as if all participants in the plan who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement are employed by a single employer. The determination of whether or not there is a termination, partial termination, or complete discontinuance of contributions shall be made separately for each such group of participants who are treated as employed by a single employer. Consequently, if there are two or more groups of participants, a termination, partial termination, or complete discontinuance can take place under a plan with respect to one group of participants but not with respect to another such group of participants or for the entire plan. See § 1.411(d)–2 for rules prescribed under section 411(d)(3).

(4) *Effective dates and transitional rules.* (i) Section 413(b)(2) and this paragraph apply to a plan for plan years beginning after December 31, 1953.

(ii) In applying the rules of this paragraph to a plan for plan years to which section 411 does not apply, section 401(a)(7) (as in effect on September 1, 1974) shall be substituted for section 411(d)(3). See § 1.401–6 for rules prescribed under section 401(a)(7) as in effect on September 1, 1974. See § 1.411(a)–2 for the effective dates of section 411.

(5) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). Plan A is a defined benefit plan subject to the provisions of this section and covers two groups of participants, local unions 1 and 2. Each local union has negotiated its own bargaining agreement with employers X, Y, and Z to provide its own benefit computation formula. The following table indicates the composition of the plan A participants:

	Employer X	Employer Y	Employer Z	Total
Local union 1	20	10	70	100
Local union 2	30	70	100	200

Under the rules of subparagraph (2) of this paragraph, the determination of whether contributions or benefits provided under the plan discriminate in favor of the prohibited group is made by applying the rules of section 401(a)(4) separately to participants who are members of local union 1 and local union 2. Thus, plan A will satisfy the qualification requirements of section 401(a)(4) if, within local union 1 and local union 2, respectively, plan benefits do not discriminate in favor of participants who are prohibited group employees within local union 1 and local union 2. Under the rules of subparagraph (2) of this paragraph, the determination under section 401(a)(4) of whether or not any individual employee, included within the 300 participants in plan A, is a highly compensated employee is based on the relationship of the compensation of such individual employee to the compensation of all the employees of Employers X, Y, and Z, whether or not such employees are participants in plan A. Thus, if there are 20 participants who are prohibited group employees within the 100 participants of local union 1, discrimination is determined by comparing the benefits of the 20 prohibited group participants to the benefits of the other 80 participants within local union 1. The same comparison would have to be made for the local union 2 participants between the prohibited group participants and the other participants in local union 2. Discrimination in benefits, if any, between the participants in local union 1 and local union 2, or among the employees of X, Y, or Z, would not affect the qualification of plan A under section 401(a)(4).

Example (2). Assume the same facts as in example (1). Employer X withdraws from the plan. Under subparagraph (3) of this paragraph, whether or not as a result of the withdrawal there is a partial termination under section 411(d)(3) is to be determined by applying the requirements of such section separately to the local union 1 and local union 2 participants. See § 1.411(d)–2 for the requirements relating to partial terminations. The application of such requirements raises the following possibilities with respect to the plan: (1) A partial termination as to local union 1, (2) a partial termination as to local union 2, (3) a partial termination as to both local unions 1 and 2, or (4) no partial termination for either local union.

Example (3). Assume the same facts as in example (1). Plan A is amended to cease future benefit accruals under the plan for local union 1 participants. Under subparagraph (3) of the paragraph, whether or not as a result of the cessation there is a partial termination under section 411(d)(3) is to be determined by applying the requirements of such section separately to the local union 1 and local union 2 participants.

Example (4). Plan A is a defined benefit plan that provides for two normal retirement benefits, X and 2X. A participant receives benefit X if the collective bargaining agreement covering his employment provides for a contribution rate, M. If such agreement provides for a contribution rate of N, the participant receives benefit 2X. Benefit X and benefit 2X constitute separate benefit computation formulas.

Example (5). Plan B is a defined benefit plan that provides for a normal retirement benefit, X. Benefit X is provided for all plan participants even though there are two collective bargaining agreements providing for different contribution rates, M and N. Plan B has a single benefit computation formula, even though there are two contribution rates.

(d) *Exclusive benefit.* Under section 401(a), a plan is not qualified unless the plan is for the exclusive benefit of the employees (and their beneficiaries) of the employer establishing and maintaining the plan. Other qualification requirements under section 401(a) require the application of the exclusive benefit rule (for example, section 401(a)(2), which precludes diversion of plan assets). For purposes of applying the requirements of section 401(a) in determining whether a plan subject to this section is, with respect to each employer establishing and maintaining the plan, for the exclusive benefit of its employees (and their beneficiaries), all of the employees participating in the plan shall be treated as employees of each such employer. Thus, for example, contributions by employer A to a plan subject to this section could be allocated to employees of other employers maintaining the plan without violating the requirements of section 401(a)(2), because all the employees participating in the plan are deemed to be employees of A.

* * * * *

(f) through (h) [Reserved].

(i) *Employees of labor unions*—(1) *General rule.* For purposes of section 413(b) and this section, employees of employee representatives shall be treated as employees of an employer establishing and maintaining a plan to which section 413(b) and this section apply if, with respect to the employees of such representatives, the plan satisfies the nondiscrimination requirements of section 401(a)(4) (determined without regard to section 413(b)(2)) and the minimum participation and coverage requirements of section 410 (determined without regard to section 413(b)(1)). For purposes of the preceding sentence, the plan and any affiliated employee health or welfare plan shall be deemed to be an employee representative. If employees of employee representatives, the plan, or an affiliated employee health or welfare plan are covered by the plan and are not treated as employees of an employer establishing and maintaining the plan under the provisions of this paragraph, the plan fails to satisfy the qualification requirements of section 401(a). In addition, in order for such a plan to be qualified, the plan must satisfy the requirements of section 413(b) (1) and (2), relating to participation and discrimination, respectively; see paragraphs (b) and (c) of this section. For purposes of this paragraph, an affiliated health or welfare plan is a health or welfare plan that is maintained under the same collective bargaining agreement or agreements, and that covers the same membership.

(2) *Effective dates and transitional rules.* (i) Section 413(b)(8) and this paragraph apply to a plan for plan years beginning after December 31, 1953.

(ii) In applying the rules of this paragraph to a plan for plan years to which section 410 does not apply, section 401(a)(3) (as in effect on September 1, 1974) shall be substituted for section 410. See § 1.401–3 for rules prescribed under section 401(a)(3) as in effect on September 1, 1974. See § 1.410(a)–2 for the effective dates of section 410.

(3) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). Plan A is a defined benefit plan, maintained pursuant to a collective bargaining agreement between employers, X, Y, and Z and labor union, L, which covers members of L employed by X, Y, and Z. In 1978, plan A is amended to cover, under the same benefit formula, all five employees of L who have satisfied the minimum age and service requirements of the plans (age 25 and 1 year of service). Assume that plan A is subject to section 413(b) and satisfies the requirements of section 413(b) (1) and (2). Assume further that with respect to employees of L, plan A (i) satisfies the nondiscrimination requirements of section 401(a)(4), (ii) meets the minimum participation requirements of section 410(a), and (iii) meets the minimum coverage requirements of section 410(b)(1)(A). Under the rules of subparagraph (1) of this paragraph, because such requirements are all satisfied, the employees of L are treated as employees of an employer establishing and maintaining plan A.

Example (2). Assume the same facts as example (1), except that plan A is amended to cover only one of the five employees of L, none of whom is covered by any other plan. Assume further that, under plan A, L does not satisfy the minimum percentage coverage requirement of section 410(b)(1)(A) with respect to employees of L. Assume further that the compensation of the one L employee who is covered by the plan is such that he is highly compensated relative to the four employees of L not covered by the plan. Consequently, L does not satisfy the minimum coverage requirements of section 410(b)(1)(B), with respect to employees of L. Under the rules of subparagraph (1) of this paragraph, the employees of L cannot be treated as employees of an employer establishing and maintaining the A plan because such coverage requirements are not satisfied by L. Consequently, the A plan fails to satisfy the qualification requirements of section 401(a).

Par. 2. Section 1.413–2 is amended by adding new paragraphs (a) and (c) to read as follows:

§ 1.413–2 Special rules for plans maintained by more than one employer.

(a) *Application of section 413(c)*—(1) *In general.* Section 413(c) describes certain plans (and each trust which is a part of any such plan) hereinafter referred to as "section 413(c) plans." A plan (and each trust which is a part of such plan) is deemed to be a section 413(c) plan if it is described in subparagraph (2) of this paragraph. Notwithstanding any other provision of the code (not specifically in conflict with the special rules hereinafter mentioned), a section 413(c) plan is subject to the special rules of section 413(c) (1) through (6) and paragraphs (b) through (g) of this section.

(2) *Section 413(c) plan.* A plan (and each trust which is a part of such plan) is a section 413(c) plan if—

(i) The plan is a single plan, within the meaning of section 413(a) and § 1.413–1(a)(2), and

(ii) The plan is maintained by more than one employer.

For purposes of subdivision (ii) of this subparagraph, the number of employers maintaining the plan is determined by treating any employers described in section 414(b) (relating to a controlled group of corporations) or any employers described in section 414(c) (relating to trades or businesses under common control), whichever is applicable, as if such employers are a single employer. See § 1.411(a)–5(b)(3) for rules relating to the time when an employer maintains a plan. A master or prototype plan is not a section 413(c) plan unless such a plan is described in this subparagraph. Similarly, the mere fact that a plan, or plans, utilizes a common trust fund or otherwise pools plan assets for investment purposes does not, by itself, result in a particular plan being treated as a section 413(c) plan.

(3) *Additional rules.* (i) If a plan is a collectively bargained plan described in § 1.413–1(a), the rules of section 413(c) and this section do not apply, and the rules of section 413(b) and § 1.413–1 do apply to the plan.

(ii) The special rules of section 413(b)(1) and § 1.413–1(b) relating to the

application of section 410, other than the rules of section 410(a), do not apply to a section 413(c) plan. Thus, for example, the minimum coverage requirements of section 410(b) are generally applied to a section 413(c) plan on an employer-by-employer basis, taking into account the generally applicable rules such as section 401(a)(5) and section 414 (b) and (c).

(iii) The special rules of section 413(b)(2) and § 1.413–1(c) (relating to (A) section 401(a)(4) and prohibited discrimination, and (B) 411(d)(3) and vesting required on termination, partial termination, or discontinuance of contributions) do not apply to a section 413(c) plan. Thus, for example, the determination of whether or not there is a termination, within the meaning of section 411(d)(3), of a section 413(c) plan is made solely by reference to the rules of sections 411(d)(3) and 413(c)(3).

(iv) The qualification of a section 413(c) plan, at any relevant time, under section 401(a), 403(a) or 405(a), as modified by section 413(c) and this section, is determined with respect to all employers maintaining the section 413(c) plan. Consequently, the failure by one employer maintaining the plan (or by the plan itself) to satisfy an applicable qualification requirement will result in the disqualification of the section 413(c) plan for all employers maintaining the plan.

(4) *Effective dates.* Except as otherwise provided, section 413(c) and this section apply to a plan for plan years beginning after December 31, 1953.

* * * * *

(c) *Exclusive benefit.* In the case of a plan subject to this section, the exclusive benefit requirements of section 401(a) shall be applied to the plan in the same manner as under section 413(b)(3) and § 1.413–1(d).

* * * * *

[FR Doc. 79–34780 Filed 11–8–79; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

36 CFR Part 1202

National Register of Historic Places

Correction

In FR Doc. 79–34455 appearing on page 64407 in the issue of Wednesday, November 7, 1979, second column, the comments due date should read "January 7, 1980".

BILLING CODE 1501–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 53, and 58

Air Programs; Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions

Corrections

In Federal Register Doc. 79–14488, appearing at page 27558, in the issue for Thursday, May 10, 1979, make the following corrections:

1. On page 27576:

(a) In the next to the last line of the first column, change "(d_j)" to read "($\overline{d_j}$)".

(b) Revise two of the equations in the second column to read:

"Upper 95 Percent Probability Limit=$\overline{D}+1.96Sa$,..... (6)

Lower 95 Percent Probability Limit=$\overline{D}-1.96Sa$,..... (7)"

(c) Change the "D" in the first equation of the third column to "$\overline{D}$".

(d) Change the "(D)" in the third line of paragraph (b) in the third column to "($\overline{D}$)".

2. On page 27577:

(a) Change the letter "D" in the first equation of the first column to "$\overline{D}$".

(b) In the next to the last line of paragraph 4.2.1.(a), change "(d_j)" to "($\overline{d_j}$)".

(c) In the third line of paragraph 4.2.1.(b), change "(D)" to "($\overline{D}$)".

(d) Change the two equations in paragraph 4.2.1.(b) to read:

"Upper 95 Percent Probability Limit=$\overline{D}+1.96Sa/\sqrt{2}$..... (10)

Lower 95 Percent Probability Limit=$\overline{D}-1.96Sa/\sqrt{2}$..... (11)"

(e) In the second line of paragraph 4.2.2.(d), change "(D)" to "($\overline{D}$)".

3. Pages 27580 and 27581 were illegible; they are both republished to read as follows:

BILLING CODE 1505–01–M

OMB NO. 158–R0012
Expires 3/80

DATA ASSESSMENT REPORT

STATE	REPORTING ORGANIZATION	YEAR	QUARTER	SEND COMPLETED FORM TO REGIONAL OFFICE WITH COPY TO EMSL RTP
1 2	3 4 5	6 7	8	

NAME OF REPORTING ORGANIZATION _____

AUTOMATED ANALYZERS

PRECISION

		NO OF ANALYZERS [1]	NO OF PRECISION CHECKS	PROBABILITY LIMITS LOWER	PROBABILITY LIMITS UPPER
A CO	C 4 2 1 0 1 (9–14)	(15–17)	(18–21)	(22–27)	
B NO_2	C 4 2 6 0 2 (9–14)	(15–17)	(18–21)	(22–27)	
C O_3	C 4 4 2 0 1 (9–14)	(15–17)	(18–21)	(22–27)	
D SO_2	C 4 2 4 0 1 (9–14)	(15–17)	(18–21)	(22–27)	
E ___	C (9–14)	(15–17)	(18–21)	(22–27)	

ACCURACY

		SOURCE OF AUDIT GAS [2]	NO OF AUDITS	LEVEL 1 LOWER	LEVEL 1 UPPER	LEVEL 2 LOWER	LEVEL 2 UPPER	LEVEL 3 LOWER	LEVEL 3 UPPER	LEVEL 4 LOWER	LEVEL 4 UPPER
A CO	C 4 2 1 0 1 (28–33)	(34–35)	(36–38)	(39–44)		(45–50)		(51–56)		(57–62)	
B NO_2	C 4 2 6 0 2 (28–33)	(34–35)	(36–38)	(39–44)		(45–50)		(51–56)		(57–62)	
C O_3	C 4 4 2 0 1 (28–33)	(34–35)	(36–38)	(39–44)		(45–50)		(51–56)		(57–62)	
D SO_2	C 4 2 4 0 1 (28–33)	(34–35)	(36–38)	(39–44)		(45–50)		(51–56)		(57–62)	
E ___	C (28–33)	(34–35)	(36–38)	(39–44)		(45–50)		(51–56)		(57–62)	

[1] COUNT ONLY REFERENCE OR EQUIVALENT MONITORING METHODS

[2] CODE USING THE FOLLOWING

A. NBS SUPPLIED SRM
B. EMSL REFERENCE GAS
C. OTHER (IDENTIFY VENDOR) CO
D. OTHER (IDENTIFY VENDOR) NO_2
E. OTHER (IDENTIFY VENDOR) O_3
F. OTHER (IDENTIFY VENDOR) SO_2

FIGURE 1 FORM 1 (FRONT)

OMB No 158–R0012
Expires 3/80

DATA ASSESSMENT REPORT

STATE	REPORTING ORGANIZATION	YEAR	QUARTER	SEND COMPLETED FORM TO REGIONAL OFFICE WITH COPY TO EMSL/RTP
1 2	3 4 5	6 7	8	

NAME OF REPORTING ORGANIZATION_____

MANUAL METHODS

PRECISION

		NO OF SAMPLERS[1]	NO OF COLLOCATED SITES	NO OF COLLOCATED SAMPLES < LIMIT	PROBABILITY LIMITS LOWER	PROBABILITY LIMITS UPPER
A TSP	1 1 1 1 0 1 (9–14)	(15–17)	(18–19)	(20–23)	(24–29)	
B SO_2	1 4 2 4 0 1 (9–14)	(15–17)	(18–19)	(20–23)	(24–29)	
C NO_2	1 4 2 6 0 2 (9–14)	(15–17)	(18–19)	(20–23)	(24–29)	
D Pb	1 1 2 1 2 8 (9–14)	(15–17)	(18–19)	(20–23)	(24–29)	

LIMITS APPLICABLE TO BLOCKS 20 23	
TSP	20 µg TSP m³
SO_2	40 µg SO_2 m³
NO_2	30 µg NO_2 m³
Pb	0 07 µg Pb/m³

ACCURACY

		TYPE OF SAMPLER[2]	NO OF AUDITS	PROBABILITY LIMITS LEVEL 1 LOWER	LEVEL 1 UPPER	LEVEL 2 LOWER	LEVEL 2 UPPER	LEVEL 3 LOWER	LEVEL 3 UPPER
A TSP	1 1 1 1 0 1 (30–35)	(36)	(37–39)	(40–45)		(46–51)		(52–57)	
B SO_2	1 4 2 4 0 1 (30–35)	(36)	(37–39)	(40–45)		(46–51)		(52–57)	
C. NO_2	1 4 2 6 0 2 (30–35)	(36)	(37–39)	(40–45)		(46–51)		(52–57)	
D Pb	1 1 2 1 2 8 (30–35)	(36)	(37–39)	(40–45)		(46–51)		(52–57)	

[1] COUNT ONLY REFERENCE OR EQUIVALENT MONITORING METHODS

[2] CODE USING THE FOLLOWING

A WITH AUTOMATIC FLOW CONTROL
B WITHOUT AUTOMATIC FLOW CONTROL
C WITH CRITICAL OFFICE FLOW CONTROL

FIGURE 1 FORM 1 (BACK)

BILLING CODE 1505-01-C

4. On page 27583:

(a) In paragraph 4.1 change the letter "(a_j)" to "$(\bar{d}_j)$".

(b) Change the last two equations of 4.1 to read:

"Upper 95 Percent Probability Limit $=\bar{d}_j+1.96S_j$ ..... (4)

Lower 95 Percent Probability Limit $=\bar{d}_j-1.96S_j$ ..... (5)"

(c) Change the equation in paragraph 5.1 to read:

"Upper 95 Percent Probability Limit $=\bar{d}_j+1.96S_j\sqrt{2}$ ..... (6)

Lower 95 Percent Probability Limit $=\bar{d}_j+1.96S_j\sqrt{2}$ ..... (7)"

5. On page 27591, insert a heading over the table at the bottom of the page to read as follows:

"Table 4.—Summary of Spatial Scales for SLAMS and Required Scales for NAMS"

6. On page 27592, in the first line of paragraph 2.3, change "108" to "1–8".

7. On page 27594, under Table 1, in the third column, change "<60,000" to ">60,000".

8. On page 27595:

(a) In the second column, Table 3, change "10,000" to "10,000".

(b) In the third line of paragraph 7, change "14018" to "14–18".

(c) In the 5th line of the 3rd column, change "21022" to "21–22".

9. On page 27599, change the equation, "PSI=max(120,0,0,20,30)=120Q02" to read: "PSI=max(120,0,0,20,30)=120"

10. On page 27601 in Table 1, in the sixth column, change the first figure from "18" to "118".

BILLING CODE 1505-01-M

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40 CFR Parts 51, 58, and 60

[FRL 1342-6]

Regulations for Ambient Air Quality Monitoring and Data Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to final rule.

SUMMARY: This action amends air quality monitoring and reporting regulations which were promulgated May 10, 1979 (44 FR 27558). The amendments correct several technical errors that were made in the promulgation notice. The amendments reflect the intent of the regulations as discussed in the preambles to the proposed (August 7, 1978, 43 FR 34892) and final regulations.

DATES: These amendments are effective November 9, 1979.

FOR FURTHER INFORMATION CONTACT: Stanley Sleva, Monitoring and Data Analysis Division, (MD–14) Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number 919–541–5351.

SUPPLEMENTARY INFORMATION: On May 10, 1979, EPA promulgated a new 40 CFR Part 58 entitled, "Ambient Air Quality Surveillance." The new regulations consist of requirements for monitoring ambient air quality and reporting data to EPA as well as other regulations such as public reporting of a daily air quality index. The requirements replace § 51.17 and portions of § 51.7 from 40 CFR Part 51 and make necessary reference changes in Parts 51, 52, and 60. Other accompanying changes were made to Part 51, such as restructuring the unchanged portion of § 51.7 into a new subpart, adding regulations concerning public notification of air quality information, and applying quality assurance requirements to such monitoring as may be required by the prevention of significant deterioration program.

These amendments to the May 10, 1979, regulations correct technical errors which were discovered after promulgation. The corrections are consistent with the intent of the rulemaking and are therefore not being proposed.

The first correction is in Part 51 in § 51.322, which is a new section created by the Part 51 restructuring process. The requirement in this section was formerly in § 51.7, Reports, which was revoked in the May 10, 1979, action. The promulgated section requires reporting to EPA of emissions data for sulfur dioxide and nitrogen dioxide as well as other pollutants. These emissions, however, have always been reported as sulfur oxides and nitrogen oxides. The amended requirements in § 51.322 will therefore be in terms of sulfur oxides and nitrogen oxides.

Two of the changes to Part 58 involve precision and accuracy check requirements for purposes of quality assurance. Appendix A specifies test gas concentrations appropriate for assessing precision and accuracy of automated analyzers operating in ranges up to 0 to 1.0 ppm for SO_2, NO_2, and O_3 or 0 to 100 ppm for CO. In a few cases, SLAMS analyzers must operate on higher ranges to accommodate local pollutant levels. In order to provide for precision and accuracy checks for analyzers operating on these higher ranges, Sections 3.1.1 and 3.1.2 of Appendix A are being modified to allow test gases in appropriately higher concentration ranges to be used.

As originally promulgated, Section 3.2.1 of Appendix A specifies that collocated samplers required to assess precision must be operated whenever routine sampling is scheduled. The intent of this requirement is to obtain duplicate measurements at collocated sites at approximately weekly intervals. For samplers which are operated more frequently than the common every-sixth-day schedule, obtaining duplicate samples at collocated sites at the increased frequency is not required to adequately assess precision. Therefore, Section 3.2.1 of Appendix A is being modified to require operation of the collocated sampler only once per week.

As originally promulgated, Appendices A and B specify that the accuracy of the TSP method will be assessed by auditing with a reference flow device. Inadvertently, Sections 3.2.2(a) and 3.4.1 of Appendices A and B respectively state that a normal glass fiber filter should be in place when auditing the high-volume sampler. This statement is being removed because an in-place filter in combination with the audit device would drop flow rates below those encountered during normal operation. Also, the same sections of Appendices A and B address the auditing of those high-volume samplers having flow regulators. With flow regulated high-volume samplers, a normal glass fiber filter should be used in conducting the audit in order to allow the flow regulator to operate correctly by increasing the flow rate back up to the correct level after the audit device is added. A statement calling for the use of glass fiber filters during the audit of these instruments is being added.

Another correction to Part 58 involves a wording change in section 3.0 of Appendix C. The section requires National Air Monitoring Stations (NAMS) to use reference or equivalent methods which have the capability of providing hourly measurements. The wording is being changed to require "automated reference or equivalent methods (continuous analyzers)." The requirement in terms of hourly measurements could have allowed SO_2 bubblers to be used, which is contrary to the intent of Section 3.0.

The final correction in Part 58 is in Figure 4 of Appendix G. The title of the figure should be "PSI function for ozone" instead of "PSI function for Photochemical Oxidants." Also, the second breakpoint of 118 was misplaced and there should be a "400" by the third breakpoint.

The last correction is in Part 60. The correction involves a change of references in § 60.25. The change was proposed with the other regulations on August 7, 1978, but was inadvertently left out of the final promulgation.

Associated Changes

Elsewhere in this issue of the Federal Register is a notice correcting typographical errors that appeared in the May 10, 1979 promulgation.

Dated: October 16, 1979.

Douglas M. Costle,

Administrator.

Part 51 of Title 40, *Code of Federal Regulations,* is amended as follows:

Section 51.322 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 51.322 Sources subject to emissions reporting.

(a) * * *

(1) For particulate matter, sulfur oxides, hydrocarbons, and nitrogen oxides, any facility that actually emits a total of 90.7 metric tons (100 tons) per year or more of any one pollutant.

* * * * *

(b) * * *

(1) For particulate matter, sulfur oxides, hydrocarbons, and nitrogen oxides, 22.7 metric tons (25 tons) per year or more.

* * * * *

Part 58 of Title 40, *Code of Federal Regulations,* is amended as follows:

Appendix A [Amended]

1. Appendix A is amended by inserting the following two sentences between the second and third sentence of the first paragraph in Section 3.1.1:

To check the precision of SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm for SO_2, NO_2, and O_3, or 0 to 100 ppm for CO, use precision check gases of appropriately higher concentration as approved by the Regional Administrator or his designee. The results of precision checks at concentration levels other than those shown above need not be reported to EMSL/RTP.

2. Appendix A is amended by inserting the following paragraph immediately after the table in the second paragraph of Section 3.1.2:

To audit SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm for SO_2, NO_2, and O_3 or 0 to 100 ppm for CO, use audit gases of appropriately higher concentration as approved by the Regional Administrator or his designee. The results of audits at concentration levels other than those shown in the above table need not be reported to EMSL/RTP.

3. Appendix A is amended by revising the sixth sentence in Section 3.2.1 to read as follows:

The collocated samplers must be operated concurrently with the routine sampler at least once a week.

4. Appendix A is amended by deleting the following words from the fourth sentence of the second paragraph of Section 3.2.2(a):

"... and a normal glass fiber filter . . ."

5. Appendix A is amended by revising the second sentence of the third paragraph of Section 3.2.2(a) to read as follows:

For this reason, the orifice of the flow audit device should be used with a normal glass fiber filter in place and without resistance plates in auditing flow regulated high-volume samplers, or other steps should be taken to assure that flow patterns are not perturbed at the point of flow sensing.

Appendix B [Amended]

6. Appendix B is amended by deleting the following words from the fifth sentence in the first paragraph of Section 3.4.1:

"... and a normal glass fiber filter . . ."

7. Appendix B is amended by revising the second sentence of the second paragraph of Section 3.4.1 to read as follows:

For this reason, the orifice of the flow audit device should be used with a normal glass fiber filter in place and without resistance plates in auditing flow regulated high-volume samplers, or other steps should be taken to assure that flow patterns are not perturbed at the point of flow sensing.

Appendix C [Amended]

8. Section 3.0 of Appendix C is revised to read as follows:

3.0 NATIONAL AIR MONITORING STATIONS (NAMS)

3.1 Methods used in those SLAMS which are also designated as NAMS to measure SO_2, CO, NO_2, or O_3 must be automated reference or equivalent methods (continuous analyzers).

Appendix G [Amended]

9. Figure 4 of Appendix G of Part 58 is revised to appear as follows:

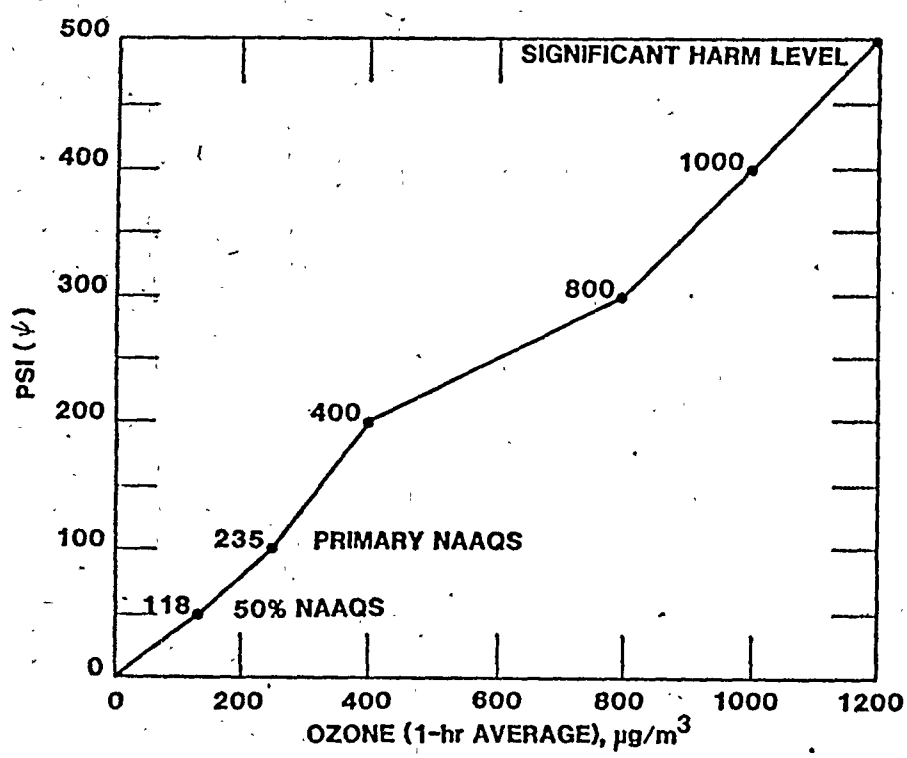

Figure 4. PSI function for ozone.

Part 60 of Title 40, *Code of Federal Regulations*, is amended as follows:

Section 60.25, paragraph (e), is amended by changing the reference to a semi-annual report required by § 51.7 to an annual report required by § 51.321. As amended, § 60.25 reads as follows:

§ 60.25 Emission inventories, source surveillance, reports.

* * * * *

(e) The State shall submit reports on progress in plan enforcement to the Administrator on an annual (calendar year) basis, commencing with the first full report period after approval of a plan or after promulgation of a plan by the Administrator. Information required under this paragraph must be included in the annual report required by § 51.321 of this chapter.

* * * * *

(Sec. 110, 301(a), 319 of the Clean Air Act as amended (42 U.S.C. 7410, 7601(a), 7619))

[FR Doc. 79-34625 Filed 11-8-79; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-54

[ADM 5420.40B CHGE 1]

Establishment and Renewal, Operation, and Control of GSA—Sponsored Advisory Committees

AGENCY: Office of Human Resources and Organization, General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation sets forth revisions to policies and procedures in GSA regarding the establishment and renewal, operation, and control of advisory committees under GSA's responsibility. These revisions are necessary to comply with recent guidelines concerning advisory committees. The revisions are intended to provide the most up-to-date procedures needed to effectively carry out the advisory committee function in GSA.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth L. George, Office of Organization and Management (202-566-1777).

SUPPLEMENTARY INFORMATION: These revisions are necessary to implement in GSA recent guidelines for use in establishing or reviewing GSA Federal advisory committees; to reflect a decision which permits the per diem rate specified in section 7 of the Federal Advisory Committee Act (FACA) to be controlling for members of GSA advisory committees; and to change the title of the office director serving as the GSA Committee Management Officer.

The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

Subpart 105-54.1—General Provisions

1. Section 105-54.104(a) is revised as follows:

§ 105-54.104 Responsibilities.

(a) Responsibility for coordination and control of committee management in GSA is vested in the Deputy Administrator. This responsibility shall be exercised through the Director of Organization and Management, Office of Human Resources and Organization (HRO), (or a designee). The Director of Organization and Management shall serve as the GSA Committee Management Officer. This Officer shall, on behalf of the Deputy Administrator, carry out the functions prescribed in section 8(b) of the Federal Advisory Committee Act. Specifically, this Officer shall control and supervise the establishment, procedures, and accomplishments of GSA-sponsored advisory committees. This control and supervision shall be adequate to ensure compliance with the GSA guidelines provided by these regulations.

* * * * *

Subpart 105-54.2—Establishment of Advisory Committees

1. Section 105-54.201 is revised to read as follows:

§ 105-54.201 Proposals for establishing advisory committees.

The Head of a Service or Staff Office may propose establishment of a Central Office or regional advisory committee within the scope of assigned program responsibilities. In doing so, the Head of the Service or Staff Office should pay particular attention to the President's statement in his memorandum to the Heads of Executive Departments and Agencies, dated February 25, 1977, that * * * "I want you to undertake a continuing effort to assure that no new advisory committees are established unless they are essential to meet the responsibilities of the Government." Accordingly, the Head of a Service or Staff Office shall not establish new advisory committees unless there is a compelling need for the committees, the committees have a truly balanced membership, and the committees conduct their business as openly as possible consistent with the law and their mandate. Each proposal shall be submitted to the GSA Committee Management Officer for review and coordination and shall include the following:

(a) A letter to the Office of the Executive Director (NA), NARS, Attn: Committee Management Secretariat, signed by the Head of the Service or Staff Office, with information copies for the Administrator and the Deputy Administrator, describing the nature and purpose of the proposed advisory committee, the reasons why it is needed, the reasons why its functions cannot be performed by an existing committee or Federal agency, and the plans to attain a balanced membership;

(b) A notice for publication in the Federal Register containing a certification by the Administrator that creation of the advisory committee is in the public interest and describing the nature and purpose of the committee; and

(c) A draft charter for review by the Committee Management Secretariat, prepared in the format outlined in § 105-54.203.

2. Section 105-54.202 is revised as follows:

§ 105-54.202 Review and approval of proposals.

(a) The GSA Committee Management Officer shall review each proposal for establishment of an advisory committee to ensure comformity with GSA committee management policies and procedures. The GSA Committee Management Officer then shall forward the letter of justification, including the draft charter, to the Committee Management Secretariat.

(b) When notified by the Committee Management Secretariat that establishment of the advisory committee would be in accordance with the Federal Advisory Committee Act, the GSA Committee Management Officer shall secure final clearance and approval of the Federal Register notice in accordance with established GSA procedures. The notice must be published at least 15 calendar days before the filing of a committee charter in accordance with § 105-54.203.

3. Section 105-54.203-1(a) is revised as follows:

§ 105-54.203-1 Preparation of charters.

(a) The Head of Service or Staff Office having jurisdiction over an advisory

committee shall, following publication of the Federal Register notice regarding the establishment of that committee, prepare in final form the committee's charter in accordance with this § 105-54.203. The completed charter shall be forwarded to the Deputy Administrator (Attn: GSA Committee Management Officer) for review, submission to the Administrator for approval, and filing.

* * * * *

Subpart 105-54.3—Advisory Committee Procedures

1. Section 105-54.301-4(b) is revised as follows:

§ 105-54.301.4 Public notice of meetings.

* * * * *

(b) The fact that a meeting may be closed to the public pursuant to the exemptions under the Government in the Sunshine Act does not, in general, relieve GSA of the requirement for publication of a notice of that meeting. An exception from this notice requirement may be authorized for reasons of national security by the Committee Management Secretariat upon request by the Head of the Service or Staff Office at least 30 calendar days before the meeting.

* * * * *

2. Section 105-54.303 is amended by revising paragraphs (b) and (i) as follows:

§ 105-54.303 Fiscal and administrative provisions.

* * * * *

(b) In those instances in which GSA is assigned administrative support responsibilities for a Presidential advisory committee, the Agency Liaison Division, Office of Administrative Services, Office of Human Resources and Organization, GSA, as a part of its support services, shall arrange with the Office of Finance, Office of Management, Policy, and Budget, for the maintenance of all necessary financial records.

* * * * *

(i) The members of an advisory committee and the staff thereof, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5702 and 5703.

* * * * *

3. Section 105-54.304 is amended by revising the introductory material in paragraphs (b) and (b)(2) and by revising paragraphs (b)(2)(i), (b)(2)(ii), and (c) as follows:

§ 105-54.304 Renewal of advisory committees.

* * * * *

(b) Except in instances in which the continued existence of an advisory committee is provided for by law, the renewal of an advisory committee requires that the Head of the responsible Service or Staff Office submit to the GSA Committee Management Officer the following:

* * * * *

(2) A letter signed by the Head of the Service or Staff Office to the Office of the Executive Director (NA), NARS, Attn: Committee Management Secretariat, with information copies to the Administrator and the Deputy Administrator, setting forth:

(i) The determination that renewal is necessary and is in the public interest;

(ii) The reasons for the determination;

* * * * *

(c) Upon receipt of the above documents, the GSA Committee Management Officer shall submit the renewal letter (see paragraph (b)(2) of this section) to the Committee Management Secretariat not more than 60 calendar days nor less than 30 calendar days before the committee expires. Following receipt of the Committee Management Secretariat concurrence in the committee renewal, the Deputy Administrator shall publish notice of the renewal in the Federal Register and file copies of the updated charter as prescribed in § 105-54.203.

* * * * *

Subpart 105-54.4—Reports

Section 105-54.401 is amended by revising the introductory material in paragraph (d) and by revising paragraph (d)(1) as follows:

§ 105-54.401 Reports on GSA Federal Advisory Committees.

* * * * *

(d) By April 1 of each year, the GSA Committee Management Officer shall prepare for the signature of the Administrator and submittal to the Committee Management Secretariat, GSA, a report on the annual comprehensive review of advisory committees. This report shall consist of:

(1) The results of the annual comprehensive review, in duplicate, of each GSA advisory committee in existence during the preceding calendar year;

* * * * *

(Public Law 92-463 dated October 6, 1972; Executive Order 11769 of February 21, 1974; Executive Order 12024 of December 1, 1977; and 41 CFR 101-11.12.)

Dated: October 26, 1979.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 79-34636 Filed 11-8-79; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 50

Consolidation of Grants to the Insular Areas

AGENCY: Public Health Service, HEW.

ACTION: Final Regulations.

SUMMARY: These final regulations implement the program of consolidated grants to the Insular Areas, as authorized by Title V of Pub. L. 95-134 (the Omnibus Territories Act). Title V provides authority for, but does not require, each Federal Department to consolidate into a single grant all existing grant funding to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands (hereafter referred to as the "Insular Areas"). These regulations specify those Public Health Service (PHS) formula grant programs for which an Insular Area may request consolidated grant support. The regulations also contain sections dealing with the application and grant award process and with postaward programmatic, fiscal, and administrative requirements.

EFFECTIVE DATE: December 10, 1979.

FOR FURTHER INFORMATION CONTACT: Theodore J. Roumel, Chief, Grants Management Branch, Division of Grants and Contracts, Parklawn Building, Room 18A-03, 5600 Fishers Lane, Rockville, Maryland 20857, Phone: 301/443-1874.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 20, 1979, (44 FR 10404) the Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, proposed to add Subpart F, "Consolidation of Grants to the Insular Areas," to 42 CFR Part 50.

The proposed regulation has been modified to indicate that additional programs may be designated—to become effective upon written notification to each Insular Area (§ 50.601). This means that the effectiveness of additional (future) program designations is not dependent upon a regulatory amendment. With respect to those programs that are specifically identified, the final

regulations reflect three changes (from the notice of proposed rulemaking): 1. The Mental Health formula grant program has been added, 2. the Preventive Health Service formula grant program has been added, and 3. the Hypertension Program has been deleted, since this initiative is now being funded as a discretionary project grant program.

In addition interested persons were invited to participate in the rulemaking process by submitting comments on or before April 23, 1979. Four comments on the proposed regulations were received during the comment period. The final regulations set forth below reflect consideration of the comments received on the notice of proposed rulemaking.

Discussion of Comments

Application Process

Comment: One commenter stated that the proposed grant application procedures (§ 50.603) were not as simple as expected, and that the Insular Areas would still be faced with existing application requirements under the semblance of consolidation.

Response: This commenter is essentially correct in stating that the Insular Areas would "still be faced with existing application requirements." Any further simplification of the application procedures under these regulations is limited by the requirements of the statutes and regulations governing the programs which may be consolidated.

Reprogramming

Comment: One commenter stated that the section on reprogramming (§ 50.605) does not permit the flexibility for an Insular Area to determine, in accordance with its own needs, how grant funds are to be utilized for the purposes of any of the programs included in the grant.

Response: Consistent with Title V of Public Law 95-134, it is the intent of these regulations to permit an Insular Area, at its discretion, to reprogram grant funds from one program to another. This commenter apparently misunderstood § 50.605(c), which describes a process of "prior notification" to the Secretary. This notification procedure is not intended to require HEW approval of an Insular Area's decision to reprogram funds.

Fiscal and Administrative Requirements

Comment: One commenter requested a waiver of all local matching requirements.

Response: Section 501(d) of Pub. L. 95-134 provides authority for a Federal department, at its discretion, to "waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved." The Secretary considered this issue and decided, on a Departmentwide basis, the local matching requirements will not be waived.

Comment: In reacting to the requirement in § 50.606(d) for an annual expenditure report, one commenter stated that grant expenditure reporting should be required on a quarterly basis.

Response: Grants administration policy provides that the Financial Status Report (expenditure report) shall be submitted annually, unless the granting agency specifies a more frequent submission schedule. Because one of the stated purposes of Title V of Pub. L. 95-134 is to minimize the burden caused by existing reporting procedures, the Department has decided that the usual submission schedule should not be accelerated.

Accordingly, a new Subpart F is added to 42 CFR Part 50 as follows.

Dated: August 15, 1979.

Julius B. Richmond,
Assistant Secretary for Health.

Approved: November 5, 1979.

Nathan J. Stark,
Acting Secretary.

Subpart F—Consolidation of Grants to the Insular Areas

Sec.
50.601 To what programs do these regulations apply?
50.602 Definitions.
50.603 What is the annual grant application process?
50.604 How will grant awards be made?
50.605 What are the rules on reprogramming funds?
50.606 What fiscal and administrative requirements apply to grantees?

Authority: Sec. 501 of Pub. L. 95-134, 91 Stat. 1164 (48 U.S.C. 1469a)

Subpart F—Consolidation of Grants to the Insular Areas

§ 50.601 To what programs do these regulations apply?

These regulations apply to the consolidation of formula grant support to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands under two or more of those Public Health Service formula grant programs which are designated by the Secretary. The following programs have been designated:

Title, Regulatory Citation, and OMB Catalog No.

(a) Alcohol Formula Grants, 42 CFR §§ 54a.201-54a.215—13.257
(b) Drug Abuse Prevention Formula Grants, 42 CFR Part 54b—13.269
(c) Mental Health Formula Grants (Section 314(g) of the PHS Act)
(d) Crippled Children's Services, 42 CFR §§ 51a.101-51a.143—13.211
(e) Maternal and Child Health Services, 42 CFR §§ 51a.101-51a.143—13.232
(f) Health Incentive Formula Grants for Comprehensive Public Health Services (Section 314(d) of the PHS Act)
(g) Formula Grants to States for Preventive Health Service Programs (Section 315 of the PHS Act)

Any designation of additional programs will become effective upon written notification to each Insular Area.

§ 50.602 Definitions.

As used in this subpart:

"Consolidated grant" means the single annual grant award to an Insular Area Agency, the funds of which are derived from the formula allocations under two or more of the programs specified in § 50.601.

"Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Government of the Northern Mariana Islands.

"Insular Area Agency" means the health agency designated by an Insular Area for administering or supervising the administration of a consolidated grant.

"Reprogramming" means the postaward shifting of funds from one of the programs included in a consolidated grant to another program included in that consolidated grant.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

§ 50.603 What is the annual grant application process?

(a) An Insular Area may apply for a grant award consolidating any two or more of the formula grant programs designated by the Secretary. The consolidated grant application will replace the submission of applications, budgets, or any supporting documentation which must be annually submitted under the programs to be consolidated. The grant application must be submitted to the Secretary at the time prescribed by the Secretary. The application must contain:

(1) Standard facesheet Form SF 424.

(2) A State Health Plan or Application Budget (Form PHS-5153-2), containing the best estimate of financial resources available to support each program for which consolidated grant support is requested.

(3) A description of the proposed program objectives to be attained by the Insular Area during the coming year for each program for which consolidated grant support is requested.

(4) A single State Plan Certification (Form PHS-5153-1) applicable to all the formula grant programs to be consolidated, signed by the head of the Insular Area Agency, unless a current single Certification for those formula grant programs is already on file.

(5) Such other information as the Secretary finds necessary to determine satisfaction of the requirements of each of the programs for which consolidated grant support is requested.

(b) This single Certification Form will replace the Certification Forms for each of the formula grant programs which are to be included in the consolidated grant award. The single Certification Form will be considered current unless, subsequent to the date the Certification is signed—.

(1) A different Insular Area Agency is designated;

(2) The head of the Insular Area Agency is changed;

(3) The Insular Area documents incorporated by reference are replaced or significantly revised; or

(4) Substantive changes in the applicable Federal statutes or regulations are made.

(c) The Insular Area Agency is responsible for notifying the Secretary of each of the changes listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section and its effect on the State Plans. The Secretary then will determine the extent to which a review of State Plans should be conducted. The Secretary will notify the Insular Area Agency of any new review requirements resulting from the changes specified in paragraph (b)(4) of this section.

§ 50.604 How will grant awards be made?

The Secretary will annually award a consolidated grant to each Insular Area which meets (a) the requirements of this subpart and (b) the requirements of each of the programs for which consolidated grant support is requested, other than those relating to the content and submission of applications.

§ 50.605 What are the rules on reprogramming funds?

(a) The amount of a consolidated grant is the sum of the formula allocations under each of the programs for which consolidated grant support is approved by the Secretary. Insular Area Agencies may reprogram all or part of that amount from one program to another, subject to the requirements of this section.

(b) Reprogramming is permitted only when funds authorized for the receiving program are insufficient to meet current financial requirements.

(c) The Insular Area Agency must notify the Secretary at least 60 days prior to any reprogramming of funds. This period will enable the Secretary to provide technical assistance, as appropriate, to aid an Insular Area in carrying out its decisions.

(d) Limitations on the period of availability of funds continue to apply even if the funds are reprogrammed. Unexpended funds available for use in a future year may only be reprogrammed when both the recipient program and the program from which funds are originally derived are included in that future year's consolidated grant.

(e) Funds may not be reprogrammed after the period of their availability for obligation has expired.

§ 50.606 What fiscal and administrative requirements apply to grantees?

(a) The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, apply to all consolidated grants made under this subpart.

(b) All grant funds, including those that have been reprogrammed, are subject to the regulatory provisions (including any matching requirements) of the program for which the funds are expended. However, under § 50.605(d) reprogrammed funds are subject to the period of availability applicable to the program from which they are originally derived.

(c) A single program performance report must be submitted annually to the Secretary at the time and in the manner prescribed in 45 CFR 74.82 (b), (c) and (d). This report shall include a section for each program for which consolidated grant funds are awarded and shall measure the progress made in attaining previously stated objectives. (See § 50.603(a)(3).)

(d) A single Financial Status Report (Form PHS-5154) must be submitted annually to the Secretary at the time and in the manner prescribed in 45 CFR 74.73. The report must show the expenditures for each program within the consolidated grant. For those funds that are available for expenditure for more than one year, the reporting must continue on at least an annual basis through the period of fund availability and a final report must be submitted when all funds have been expended or when the period of fund availability has expired.

[FR Doc. 79-34626 Filed 11-8-79; 8:45 am]
BILLING CODE 4110-85-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FI-5406]

National Flood Insurance Program; Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Correction to final rule for the Township of Upper Allen, Cumberland County, Pennsylvania.

SUMMARY: The 100-year base flood elevations previously published in the Federal Register for the Township of Upper Allen, Cumberland County, Pennsylvania, were, in part, incorrectly transcribed from that community's Flood Insurance Study and Rate Map, where they appeared correctly, 44 FR 51602, September 4, 1979. They are accurate as follows:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Yellow Breeches Creek.	Lisburn Road	376
	Wharf Road	380
	Macadam Road	390
	Pa. Route 114	394
	Bishop Road (downstream crossing).	399
	Bishop Road (upstream crossing).	409
	Grantham Road	414
	Upstream corporate limits	421
Trout Run	College Avenue	413
	Mill Road	413
	U.S. Route 15 (upstream side).	428
	Gettysburg Pike	430
	Lisburn Road (upstream side)	436
	Corporate limits	447

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (in Alaska and Hawaii call toll free line (800) 424-9080), Room 5150, 451 Seventh Street SW., Washington, D.C. 20410.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: October 24, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-34630 Filed 11-8-79; 8:45 am]
BILLING CODE 6718-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Amdt. No. 1 to Service Order No. 1345]

Car Service; Appointment of Embargo Agents

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Service Order No. 1345, Appointment of Embargo Agents.

SUMMARY: Service Order No. 1345 appoints Joel E. Burns, and Robert S. Turkington as agents of the Commission with authority to direct the placement of embargoes by railroads at such points where freight cars are being unduly delayed due to accumulations, congestions, or emergency situations. This amendment extends the expiration date of the appointments for one year.

EFFECTIVE: 11:59 p.m., October 31, 1979, and continuing in effect until 11:59 p.m., October 31, 1980.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, (202) 275-7840.

Decided: October 30, 1979.

Whenever any carrier by railroad, subject to Part I of the Interstate Commerce Act, is unable to control freight traffic movements, because of car accumulations, threatened congestions, or other interferences of a temporary nature compel restrictions against car movements, car service will be promoted in the interest of the public and the commerce of the people by the appointment of agents with authority to direct the placement of embargoes; that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1345 Car service.

(a) *Appointment of Embargo Agents.* Joel E. Burns, Director, and Robert S. Turkington, Assistant Director, Bureau of Operations, Interstate Commerce Commission, Washington, D.C., are hereby appointed Agents of the Interstate Commerce Commission and vested with authority to direct the placement of embargoes by railroads at such points where freight cars are being unduly delayed due to accumulations, congestions, or emergency situations.

(b) Embargoes placed under this order shall be at the direction of the Agents of the Commission and shall be published through the Association of American Railroads, Car Service Division, and in conformity with Rule 16 of the "Code of Car Hire Rules and Interpretations—Freight" of the Association of American Railroads and Circular CSD-87, Sixth Revision, both published in the Official Railway Equipment Register, ICC-RER No. 6410-B, issued by W. J. Trezise, or successive issues or reissues thereof.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(d) *Rules, Regulations, and Practices Suspended.* The operation of all rules, regulations, and practices insofar as they conflict with the provisions of this order, is hereby suspended.

(e) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1979.

[1] (f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 31, 1980, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126))

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service car and hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis. Commissioner Gresham did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-34870 Filed 11-8-79; 8:45 am]

BILLING CODE 7035-01-M

[1] Change in Expiration Date.

49 CFR Part 1034

[Amdt. No. 1 to Service Order No. 1344]

Car Service; Rerouting of Traffic—Appointment of Agents

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Service Order No. 1344 Appointment of Rerouting Agents.

SUMMARY: Service Order No. 1344 appoints Joel E. Burns, and Robert S. Turkington as agents of the Commission with authority to issue orders authorizing railroads to reroute traffic whenever a railroad is unable to operate over its normal routes. This amendment extends the expiration date of the appointments for one year.

DATES: Effective 11:59 p.m., October 31, 1979. Expires 11:59 p.m., October 31, 1980.

FOR FURTHER INFORMATION: J. Kenneth Carter, (202) 275-7840.

Decided: October 30 1979.

Whenever any carrier by railroad, subject to Part I of the Interstate Commerce Act, is, for any reason, unable to transport traffic offered, car service will be promoted in the interest of the public and the commerce of the people by the appointment of agents with authority to reroute and divert such traffic; that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1034.1344 Routing of traffic.

(a) Rerouting of traffic—Appointment of Agents. Joel E. Burns, Director, and Robert S. Turkington, Assistant Director, Bureau of Operations, Interstate Commerce Commission, Washington, D.C. are hereby appointed Agents of the Interstate Commerce Commission and vested with authority to authorize diversion and rerouting of loaded and empty freight cars from and to any point in the United States whenever, in their opinion, an emergency exists whereby any railroad is unable to move traffic currently over its lines.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(c) *Effective date.* This order shall become effective at 11:59 p.m., October 31, 1979.

[1] (d) *Expiration date.* This order shall expire 11:59 p.m., October 31, 1980, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126))

[1] Change in expiration date.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C. and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis. Commissioner Gresham did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-34871 Filed 11-8-79; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 44, No. 219
Friday, November 9, 1979

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Pay Under the General Schedule

AGENCY: Office of Personnel Management.

ACTION: Proposed regulation with comments invited for consideration in final rulemaking.

SUMMARY: This regulation would permit persons who have held appointments under the Intergovernmental Personnel Act to be given new appointments at advanced rates in recognition of superior qualifications without having a break in service of at least 90 days following their IPA assignments. The regulation is proposed because IPA appointees have not made a commitment to the Federal service; and ability of Federal agencies to match their State, local, or university salaries, if this was not done at the time of the IPA appointment, may be essential to recruit these individuals for career service.

DATE: Written comments will be considered if received no later than January 8, 1979.

ADDRESS: Send written comments to Staffing Services Group, Inservice Placement Branch, Room 6H28, Office of Personnel Management, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, OPM proposes to amend 5 CFR by adding § 531.203(b)(2)(v). As amended, § 531.203(b)(2) reads as follows:

§ 531.203 General provisions.

* * * * *

(b) *Superior qualifications appointments.*

* * * * *

(2) An agency may make a superior qualifications appointment by new appointment or by reemployment except that when made by reemployment, the candidate must have a break in service of at least 90 calendar days from his or her last period of Federal employment or employment with the Government of the District of Columbia (other than:

(i) employment under an appointment as an expert or consultant under section 3109 of title 5, United States Code,

(ii) employment under a temporary appointment effected primarily in furtherance of a postdoctoral research program, or effected as a part of a predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree,

(iii) employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of the Public Health Service,

(iv) employment which is not both full-time employment and the principal employment of the candidate, or

(v) appointment under the Intergovernmental Personnel Act.

* * * * *

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-34782 Filed 11-8-79; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 271

Request for Comments on Establishing Procedures for Reducing Food Stamp Benefits

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of Intent to Propose Rulemaking.

SUMMARY: The Department issued emergency rules in the June 12, 1979 Federal Register (44 FR 33762) which established procedures for reducing food stamp allotments if the Secretary deems it necessary to do so to remain within the spending limits set by Congress. The 1979 amendments to the Food Stamp Act (Pub. L. 96-58), which were signed into law on August 14, 1979, contain a provision that changes the basis on which the June 12 rules were written. Therefore, new benefit reduction regulations must be promulgated. The Department is issuing this Notice of Intent to Propose Rulemaking to invite public participation in the formulation of new benefit reduction regulations.

DATE: Comments must be received on or before December 10, 1979, to be assured of consideration.

ADDRESS: Comments should be submitted to Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. A proposed rulemaking will be issued after considering the comments. All written comments will be open to public inspection at the Office of the Food and Nutrition Service, USDA, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street SW., Room 678, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy/Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250. 202-447-9075.

SUPPLEMENTARY INFORMATION:

Background

Section 18(b) of the Food Stamp Act of 1977 (the Act) directs the Secretary to reduce the value of food stamp allotments issued to certified households in order to stay within the appropriations limits set by Congress. The Department published emergency rules in the June 12, 1979 Federal Register that implemented this section of the Act. Those rules, if used, would result in all households having their allotments reduced by the same percentage. This *pro rata* approach to benefit reductions was based on opinions from both the Department's General Counsel and the Comptroller General of the United States who agreed that the Act would only permit *pro rata* reductions.

While *pro rata* reductions result in all households having their allotments reduced by the same percentage, they also result in households with lower incomes having more food stamps taken away from them than are taken away from higher income households. This is

so because lower income households receive higher allotments than higher income households.

To correct this situation and ensure that the most needy participant households do not bear a disproportionate share of any ordered reduction, Congress included a provision in the 1979 amendments amending Section 18 by adding new sections (c) and (d) giving the Secretary the authority to establish a benefit reduction procedure that would result in benefits being reduced on other than a *pro rata* basis. Specifically, Section 1(4) of the 1979 amendments, which were signed into law on August 14, 1979, states, in part that: "In prescribing the manner in which allotments will be reduced * * * the Secretary shall ensure that such reductions reflect, to the maximum extent practicable, the ratio of household income, determined under sections 5(d) and 5(e) of the (the Food Stamp Act), to the income standards of eligiblity for households of equal size* * *."

Benefit Reduction Methods

While the provisions of the 1979 amendments noted above set forth the general approach the Department is to take in prescribing benefit reduction procedures, they do not prescribe specific procedures to be used. The Department is issuing this Notice of Intent to Propose Rulemaking to invite public participation in the process of determining what the benefit reduction procedures ought to be. The following three alternatives are currently being considered by the Department.

Alternative 1

The first alternative being considered by the Department would reduce benefits to all households by applying varying percentage reduction rates to the coupon allotment levels on the coupon allotment tables. The largest percentage reduction rates would be applied to the allotments issued to the households at the highest net income levels for each household size. As net income levels decreased in the allotment tables, the applicable reduction rate would decrease. The lowest reduction rate would, therefore, be applied against zero net income households.

If this alternative is adopted, and a benefit reduction is ordered, the Department would determine what the necessary reduction rates would be. To do this, States would need to tell us the total amount of benefits issued each month to all households. The data would have to be broken down by household size and monthly net income. For example, we would need to know how many benefits were issued each month to two-person households with net monthly incomes between $180 and $183 and how many benefits were issued each month to five-person households with net monthly incomes between $247 and $249. This precise breakdown would be needed so that we could determine what percentage reduction rate to apply to each allotment to achieve the savings in benefits necessary to make up the budgetary short fall being faced.

Once the reduction rates were determined, the Department would calculate new allotment levels for each income increment and household size and would issue new allotment tables. State agencies would be required to take this information and implement the benefit reduction. In order to ensure that a benefit reduction is implemented as expeditiously as possible, States would be required to alter their issuance systems so that when a reduction was ordered, each allotment for each income increment for each household size could be reduced by the proper amount. Establishing this capability would probably entail the reprogramming of the computer systems used to issue benefits, the streamlining of procedures used to put new allotment tables into use, or both.

Alternative 2

The second method under consideration would reduce benefits by altering the amount of household net income that is subtracted from the Thrifty Food Plan in determining household benefit levels. Under current rules, benefit levels are determined by subtracting 30 percent of a household's net income from the Thrifty Food Plan amount for the household's size. This method, if adopted, would result in perhaps 50% or more of the household's net income being subtracted from the Thrifty Food Plan amount used.

If this method is adopted and a benefit reduction is ordered the Department would determine what the new rate for reducing net income should be. To make this determination, States would need to advise FNS how many households receive benefits at each net income increment on the coupon allotment tables. This may be able to be done either by actual count of by using statistical sampling techniques. With this information, the Department would issue new coupon allotment tables that could be used to issue coupons to households.

In addition to changing their data gathering systems to report participation data as prescribed above, States would have to alter their issuance systems so that benefit reductions could be implemented. As with the previous alternative, this could entail reprogramming computer systems that are used to issue benefits, streamlining the procedure used for implementing the new allotment tables, or both.

Alternative 3

The third method being considered would reduce benefits by reducing Thrifty Food Plan amounts for each household size by the same percentage. By doing this, all households of a given size would have their benefits reduced by the same dollar amount. The dollar reduction would be smallest for one-person households and greatest for the largest households. Since the dollar amount would be the same for each net income level the rate of reduction would be lowest for zero net income households and greatest for the highest net income households.

If this method is used to reduce benefits, the Department would issue new coupon allotment tables reflecting the reduced Thrifty Food Plan amounts. To determine how much to reduce the Thrifty Food Plan, States would need to advise FNS of the number of households participating each month by household size. States do not report participation data in this manner currently. Therefore, they may need to alter their data gathering systems to be able to meet this requirement.

As with the previous two alternatives, States may also have to change their issuance systems in order to be able to enact benefit reductions using this method. However, the alteration required may not be as extensive. Essentially, the task of implementing a benefit reduction using this method would be the same as that of implementing semiannual allotment changes. Since a reduction will be made for a short period of time, however, and would likely occur at about the same time a semiannual change was made (July), States would need to be able to implement both changes. This may entail changes having to be made in States' issuance systems.

The Department is interested in receiving comments on these three alternatives. We are also interested in hearing about any other methods that readers may have that would reduce benefits in the manner described by Congress. In evaluating the various methods presented here and other methods presented by commenters, close attention will be paid to the caseload impact of each benefit reduction method. Comments on this issue will be of particular interest. Close attention will also be paid to the administrative feasibility of each

method. Consideration should be given to the following questions: Can the methods described be implemented? If not why not? What difficulties do each of the methods present? Which method is the most difficult to administer? Which one is the most practicable? What would the administrative cost and workload impacts of each method be? Commenters proposing alternate methods should include information as to how the above questions impact on their proposed method.

Elderly and Disabled

In addition to giving the Secretary the authority to reduce benefits on other than a *pro rata* basis, Congress gave the Secretary the authority to establish special provisions for reducing benefits to the elderly and disabled, although Congress did not require the Secretary to establish such a special provision. Specifically, Section 1(4) of the 1979 Amendments to the Food Stamp Act of 1977 states, in part, that: "The Secretary may, in prescribing the manner in which allotments will be reduced, established * * * special provisions applicable to persons who are physically and mentally handicapped or otherwise disabled * * *." Congress' intent in giving the Secretary this authority was to have the Department, if possible, establish benefit reduction procedures that would impact less on the elderly and disabled than on the rest of the caseload. As part of this rulemaking process, the Department would welcome comments from readers as to whether such a provision should be established and, if so, what it should be.

In considering whether special provisions for the elderly and disabled should be included in the benefit reduction procedures issued, FNS must know if these special procedures can be administered and, if so, how difficult would they be. There are several ways that the effects of benefit reductions could be lessened for the elderly or disabled. One way would be to apply different reduction rates to these groups. Another would be to hold them harmless and not reduce their benefits at all. Still another way would be to establish a minimum benefit level that would apply to these groups during a benefit reduction. Whatever way is chosen, whether it be one of these or one suggested in the comments, it is likely to have a significant impact on States' data gathering activities and issuance systems. This is because States will have to be able to separately identify all households with elderly or disabled members and report participation data for them as well as for the rest of the caseload. States will also have to be able to issue benefits to these households on a different basis than they issue benefits to the rest of the caseload. Therefore, any evaluation of the administrative feasibility of these special provisions (or any others that readers may suggest) should include an examination of these impacts.

It is likely that adoption of any special provision for the elderly and disabled would result in an alteration of States' data gathering systems. This would be in addition to the effect the reduction method would have. For example, the third benefit reduction alternative discussed, requires information on the number of households by household size which participate each month. If this alternative is adopted with a special provision for the elderly and disabled, such households would have to be identified as to if they contain elderly or disabled members.

It is also likely that the adoption of a special provision for the elderly would require States to change their issuance systems to accommodate the special provision. Again, this would be in addition to the changes made necessary by the reduction method chosen. In the example above, if households with elderly or disabled members are not to be affected by benefit reductions, States would have to have issuance systems that could reduce benefits to households by differing amounts based on household size and, in addition, issue full benefits to households with elderly or disabled members.

The Department would appreciate receiving information from readers that would help in assessing the administrative feasibility of establishing special provisions for the elderly and disabled. Are there other methods, aside from those described above, that could be used to meet the intent of Congress? Can a special provision for the elderly and disabled be administered? If so how difficult would it be to administer such a provision? What impact would a special provision have on the administrative cost and workload impacts estimated earlier?

What impacts would it have on the implementation time frames for each benefit reduction method? Would one special provision be more or less difficult than another or have more or less impact than another? Which?

Minimum Benefit Levels

The 1979 Amendments also contain a provision that gives the Secretary the authority to establish a benefit reduction procedure that provides for minimum benefit levels. Found in Section 1(4) of the Amendment, the provision states that: "The Secretary may, in prescribing the manner in which allotments will be reduced, establish * * * minimum allotments after any reductions are otherwise determined * * *." It is important to note that, as with the special provision for elderly and disabled, Congress did not require that minimum benefit levels be established; it gave the Secretary the discretion to establish them.

Many of the same issues and questions that arise when considering whether special provisions for the elderly and disabled should be implemented arise again when considering whether minimum benefit levels should be implemented. One of the most important of these questions is whether minimum benefit levels can be administered in conjunction with a benefit reduction procedure and, if so, how difficult it would be.

The Department has thought of several ways to establish minimum benefit levels. One way would be to establish a minimum dollar amount of benefits that no one would get less than. This could be the $10 amount currently in use or another lesser amount that could either be determined now or at the time a benefit reduction was deemed necessary. Another way would be to establish a maximum percentage reduction which would not be exceeded during a benefit reduction. Thus, during a benefit reduction all households would be guaranteed a certain percentage of their full allotments.

As with the first method, the guaranteed percentage could be predetermined and set now or it could be determined at the time a benefit reduction was needed.

The Department would appreciate receiving comments from readers about whether a provision establishing a minimum benefit level should be included in the benefit reduction procedures. Comments with information about the administrative feasibility of such a provision would be particularly helpful. It should be noted that any assessment of the administrative feasibility of the methods mentioned above, or of any method a reader may wish to suggest, must be made in light of the method used to reduce benefits since the impacts of a minimum benefit level will be different depending on which reduction method is used. Likewise, any assessment will have to take into account the possibility that the benefit reduction procedures will contain a special provision for the elderly and disabled. The impacts that the Department is most interested in measuring are those pertaining to the effects of a minimum benefit level

provision would have on the caseload, on States' data gathering systems, and on States' abilities to issue benefits.

Conclusion

It is stressed that the Department has not decided which, if any, of the reduction procedures described above will be included in the proposed benefit reduction rulemaking nor has it been decided if the reduction procedures proposed will contain a special provision for the elderly and disabled. The decisions that are made will depend largely on the information received in response to this Notice. Therefore, we encourage all interested parties to submit any comments they may have. All will be given full consideration during the preparation of proposed rulemaking.

Dated: November 2, 1979.

Bob Greenstein,

Administrator.

[FR Doc. 79-34628 Filed 11-8-79; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 318

Hawaiian and Territorial Quarantine Notices; Hawaiian Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule: Notice of extension of time for comment period.

SUMMARY: This action extends the period of time for comments on the proposal to amend the Hawaiian fruits and vegetables rules and regulations to November 30, 1979.

DATES: Comments on the proposed regulation must be received on or before November 30, 1979.

ADDRESS: Written comments should be submitted to H. V. Autry, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635, Federal Building, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301-436-8247.

SUPPLEMENTARY INFORMATION: On August 17, 1979, the Department published in the Federal Register (44 FR 48230-48234) a proposal to amend the Hawaiian fruits and vegetables rules and regulations relating to relieving and imposing restrictions regarding movement from Hawaii to other parts of the United States of certain fruits and vegetables. A 45-day comment period was provided in order that information for a decision could be obtained in sufficient time for the proposed regulation, if adopted, to be effective when the approved thick-skinned avocadoes are ready for harvest and shipment in November 1979. The comment period was scheduled to expire October 1, 1979. After publication of the proposal, the Department received requests from trade associations and organizations to extend the comment period to at least 60 days and to schedule additional hearings.

A notice was published in the Federal Register on September 20 and 21, 1979, which extended the comment period to October 20, 1979. The notice also announced a second hearing at New Orleans, Louisiana, on October 3 and 4, 1979.

Further, in order to receive additional comments; for the convenience of the affected public; and to provide additional opportunity for public involvement, a notice was published in the Federal Register on October 5, 1979, which announced additional public hearings for October 24, 1979, in Kailua-Kona, Hawaii, and for October 25, 1979, in Honolulu, Hawaii. It also extended the comment period to November 9, 1979.

In accordance with the proposal to amend the Hawaiian fruits and vegetables rules and regulations published on August 17, 1979, as amended (44 FR 48230-48234) and subsequent notice (44 FR 54518 and 44 FR 57415), public hearings were held in Long Beach, California, on September 25 and 26, 1979; in New Orleans, Louisiana, on October 3 and 4, 1979; Kailua-Kona, Hawaii, on October 24, 1979, and Honolulu, Hawaii, on October 25, 1979.

The Department has again received requests from trade associations and organizations to extend the comment period. These requests are based on the assertions that the additional time is necessary in order to examine the public records following the final hearing on October 25 and to prepare comments on the proposal. These circumstances are considered sufficient justification for an extension of the time allotted for filing comments. Accordingly, the comment period is being extended to November 30, 1979.

Done at Washington, D.C., this 6th day of November 1979

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-34680 Filed 11-8-79; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 145

[Docket No. 78P-0147]

Canned Fruits; Proposed Revision of Standards of Identity and Quality for Canned Pears

AGENCY: Food and Drug Administration.

ACTION: Reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on a proposal to amend the standards of identity and quality for canned pears. This action is based on a request for additional time to respond to the proposal.

DATE: Comments by November 28, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFROMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St., SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 1, 1979 (44 FR 31669), FDA proposed to amend the standards of identity and quality for canned pears (21 CFR 145.175 (a) and (b)) to provide for an additional optional style of canned pears designated "chunky". Comments were to be filed by July 31, 1979.

FDA has received a request from the Food Safety and Quality Committee of the Canners League of California (CLC), 1007 L St., Sacramento, CA 95814, for a 120-day extension of the comment period on the proposal. The CLC stated that the additional time is needed for technical analysis of the effects of the dimension requirements of "chunky" style pears in relation to the styles "diced" and "pieces or irregular pieces" during this packing season.

FDA has concluded that the CLC has given adequate grounds to support the need for a 120-day extension for the submission of comments to the proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), the comment period on the proposal to amend the standards of identity and quality for canned pears is reopened and extended to November 28, 1979.

Interested persons may, on or before November 28, 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 named office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 1, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-34478 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 868

[Docket No. 78N-1654]

Medical Devices; Classification of Indwelling Blood Oxyhemoglobin Concentration Analyzers

Correction

In FR Doc. 79-33340, appearing on page 63304; in the issue of Friday, November 2, 1979, make the following correction:

On page 63304, in the third column, the third line should have read:

"DATES: Comments by January 2, 1980."

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 208

[Docket No. R79-725]

Partial Payment of Claim

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development proposes to amend its rules relating to payment of insurance claims on certain types of defaulted multifamily project mortgages insured by the Secretary to enable the Secretary to comply with the requirements of Section 203(e) of the Housing and Community Development Amendments of 1978. Under existing Regulations, the Secretary is required, upon the filing of an insurance claim under the insured program, to make payment to an approved mortgagee who has a good right to assign the mortgage and who has satisfied all of the requirements for filing an insurance claim. The proposed amendment will authorize the Secretary to request that the mortgagee, in lieu of assignment and full payment of the claim, accept partial payment of the claim under the mortgage insurance contract and to recast the remaining mortgage balance under the insured mortgage. The mortgagee would hold the reduced insured mortgage and the mortgagor would be required to give the Secretary a second mortgage on the property for the amount of the partial payment under such terms and conditions as the Secretary may determine. Participation in this arrangement by the mortgagee would be voluntary and would be based on its determination that such participation would be in its own best interest.

COMMENTS DUE: January 8, 1979.

ADDRESS: Comments should be submitted to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. HUD will make such modifications as it deems appropriate in the final regulations. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Conrad Egan, Office of Multifamily Housing Management and Occupancy, Department of Housing and Urban Development, Washington, D.C. 20410 (202) 755-5866.

SUPPLEMENTARY INFORMATION: The recently enacted amendment to the National Housing Act was designed by Congress for use by the Secretary as an additional tool, consistent with other departmental policies and activities, to effectuate the overall goals of the National Housing Act. Congress has established that this authority will be used sparingly and only in limited instances. It must be coordinated and utilized in a consistent manner in conjunction with other policies of the Department with respect to troubled multifamily projects. This Part provides the criteria for determining if the Department wishes to offer the mortgagee the opportunity to accept a partial payment of claim where a mortgagee has elected to assign a certain type of defaulted multifamily mortgage insured by the Secretary. In cases where a partial payment of claim is feasible, the Secretary may request the mortgagee to accept, in lieu of assignment, a partial payment of claim under the mortgage insurance contract and to recast the remaining balance of the insured mortgage under terms and conditions prescribed by the Secretary. This gives the Secretary the flexibility to provide relief to a project that is in good physical condition by restoring its financial soundness and by maintaining its long-term economic viability. It will assist those projects where the tenants' rent-to-income ratio is excessive and where, without a reduction of the insured mortgage, an increase in rents to the level necessary to sustain operations would destroy the project's low- and moderate-income character. It must be determined, however, that this action on the part of the Secretary will be less costly to the Federal Government than other reasonable alternatives for maintaining the low- and moderate-income character of the project. At the same time, the Federal Government's insurance payment will be reduced from that of payment of a total insurance claim to a partial payment of claim.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. The Finding of Inapplicability in accordance with HUD's environmental procedures is available for inspection at the Office of the Rules Docket Clerk, at the above address.

Accordingly, a new Part 208 is added to read as follows:

Table of Contents

Sec.
208.101 Applicability.
208.105 Eligibility requirements.
208.110 General requirements.
208.115 Conditions for approval.

Authority: Sec. 203(e) of the Housing and Community Development Amendments of 1978.

§ 208.101 Applicability.

The partial payment of claim may be made available to certain HUD-insured defaulted multifamily housing projects where the Secretary determines that such relief would be less costly to the Federal Government than other reasonable alternatives for maintaining the low and moderate-income character of the project. The projects eligible for participation are those which receive the benefit of subsidy in the form of (1) below market interest rates pursuant to Section 221(d)(5) or interest reduction payments pursuant to Section 236 of the National Housing Act, or (2) rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965; or, which met the criteria in (1) or (2) above prior to acquisition by

the Secretary and which have been sold by the Secretary, subject to a mortgage insured by the Secretary and subject to an agreement (in effect at the time of the mortgagee's request to assign the mortgage) which provides that the low- and moderate-income character of the project will be maintained.

§ 208.105 Eligibility requirements.

For the mortgagee to be eligible for a partial payment of claim, in lieu of a full assignment, the Secretary must determine:

(1) That the mortgagee is entitled to assign the mortgage in exchange for the payment of insurance benefits pursuant to Section 207.255 of these Regulations; and

(2) That a partial payment of claim would be less costly to the Federal Government than other reasonable alternatives for maintaining the low- and moderate-income character of the project.

§ 208.110 General requirements.

In making the determination as to whether to offer the mortgagee the opportunity to amend its election and to participate in a partial payment of claim in lieu of a full assignment, the Secretary must determine:

(1) That the relief resulting from a partial payment of claim, when considered with other resources available to the project, would be sufficient to restore the financial viability of the project;

(2) That the project is or can reasonably be made structurally sound;

(3) That the management of the project is being conducted by persons who meet minimum levels of competency and experience as the Secretary; may prescribe; and

(4) That the default under the insured mortgage was beyond the control of the mortgagor.

§ 208.115 Conditions for approval.

As a condition to approval of a partial payment of claim under this Part, formal agreement must be obtained as to the following:

(a) That the mortgagee voluntarily agrees to accept partial payment of the insurance claim under the mortgage insurance contract and to recast the remaining mortgage amount under such terms and conditions as the Secretary may prescribe; and

(b) That the mortgagor agrees to repay the amount of such partial payment, as well as the interest due as called for in the mortgage documents, to the Secretary with the obligation secured by a second mortgage on the project under such terms and conditions as the Secretary may prescribe. The amount of the second mortgage will be determined on a case-by-case basis by the Secretary dependent on the amount of partial payment necessary to reduce the debt service on the insured mortgage to a level that estimated income available from project operations will be sufficient to cover estimated operating expenses and the debt service on the modified insured mortgage. The second mortgage will bear interest at the same rate as the insured mortgage.

(Sec. 203(e) of the Housing—and Community Development Amendments of 1978)

Issued at Washington, D.C., October 11, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 79-34649 Filed 11-8-79; 8:45 am]

BILLING CODE 4210-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Proposed Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission proposes to amend its regulations on designation of one State Agency so that it may handle employment discrimination charges filed with the Commission. Proposed is one Agency that requested deferral designation as provided under the authority of Title VII of the Civil Rights Act of 1964, as amended. The proposal would authorize the Agency to process charges deferred to it by the Commission.

DATES: Comments must be received by: November 26, 1979.

ADDRESS: Comments should be sent to Equal Employment Opportunity Commission, Office of Field Services (State and Local), 2401 E Street, N.W., Washington, D.C 20506.

FOR FURTHER INFORMATION CONTRACT: Franklin F. Chow, telephone 202-634-6040, Equal Employment Opportunity Commission (State and Local), 2401 E Street, N.W., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Pursuant to § 1601.71, Chapter XIV, Title 29 of the Code of Federal Regulations the Equal Employment Opportunity Commission (hereinafter referred to as the Commission) proposes that the agency listed below be designated as a "706 Agency."

The purposes for such designation are as follows: First, that the agency receive charges deferred by the Commission pursuant to Section 706 (c) and (d) of Title VII of the Civil Rights Act to 1964, as amended; second, that the Commission accord "substantial weight" to the final findings and orders of the agency pursuant to Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended. The proposed designation of the agency listed below is hereby published to provide any person or organization not less than 15 days within which to file written comments with the Commission as provided for under § 1601.71(a).

§ 1601.74 [Amended]

At the expiration of the 15 day period, the Commission may effect designation of the agency by publication of an amendment to § 1601.74(a). The proposed "706 Agency" is as follows:

North Dakota Department of Labor [1]

Written comments pursuant to this notice must be filed with the Commission on or before November 26, 1979. Signed at Washington, D.,C. this 5th day of November 1979.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 79-34724 Filed 11-8-79; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

Reporting of Fatality or Multiple Hospitalization Accidents

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

ACTION: Proposed rule, Extension of Comment Period.

SUMMARY: On October 16, 1979, the Occupational Safety and Health Administration (OSHA) published a proposed rule in the Federal Register (44 FR 59560) which would require employers to report fatal or multiple hospitalization accidents within 8 hours instead of the 48 hours provided in the existing rule (29 CFR 1904.8).

[1] The North Dakota Department of Labor has been proposed as a 706 Agency for all charges except charges alleging retaliation under Section 704(a) of Title VII. For these types of charges it shall be deemed a "Notice Agency," pursuant to 29 CFR 1601.71(c).

Pursuant to Executive Order 12044 (43 FR 12661) and the Department's Guidelines (44 FR 5570) OSHA has determined that this rule is not a major or significant regulation requiring regulatory analysis or assessment. However, to maximize the opportunity for public participation OSHA is providing a 60 day comment period for this proposed rule.

Accordingly, the time period for public comment on this proposed rule is extended to December 17, 1979.

In all other respects the Notice of Proposed Rulemaking remains in effect.

DATE: Comments on the proposed rule should be submitted on or before December 17, 1979.

ADDRESS: Comments should be sent to Docket Officer, Docket S-125, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Grosso, U.S. Department of Labor—OSHA, 200 Constitution Avenue, N.W., Room N 3106, Washington, D.C. 20210, Telephone: (202) 523-8137.

Signed at Washington, D.C. this 6th day of November, 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-34815 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-26-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Education Loans

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: The following proposed regulations implement those provisions of the Veterans' Housing Benefits Act of 1978 which pertain to the education loan program. They set a minimum level of tuition and fees which certain veterans and eligible persons must pay before they can be eligible for an education loan. They also shorten the time period for repayment of small loans.

DATES: Comments must be received on or before December 10, 1979. It is proposed to make this amendment effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until December 20, 1979.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC, (202-389-2092).

SUPPLEMENTARY INFORMATION: Section 21.4501, Title 38, Code of Federal Regulations is amended to provide a minimum level of tuition and fees which certain veterans and eligible persons must pay before becoming eligible for an education loan. This minimum is based on $700 for a full-time student for an academic year. Section 21.4504 is amended to provide for a shorter repayment period for loans of less than $600.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until December 20, 1979. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: November 1, 1979.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

1. In § 21.4501, paragraphs (a) and (b) are revised to read as follows:

§ 21.4501 Eligibility.

(a) *General.* The criteria for determining a veteran's or other eligible person's eligibility for an education loan depend upon whether or not the veteran's or eligible person's delimiting period as determined by § 21.1042, § 21.1043, § 21.3041 or § 21.3046 has expired. Any veteran or eligible person shall be entitled to an education loan if he or she meets the criteria of this paragraph as well as the criteria of either paragraph (b) or (c) of this section as appropriate. The veteran or eligible person must:

(1) Have financial resources that may be reasonably expected to be expended for education needs and which are insufficient to meet the expected actual cost of attendance; and

(2) Execute a promissory note payable to the Veterans Administration, as provided by § 21.4504.

(b) *Additional criteria for veterans and eligible persons eligible to receive educational assistance allowance.* An education loan shall be granted to a veteran or eligible person whose delimiting period as determined by § 21.1042, § 21.1043, § 21.3041 or § 21.3046 has not expired if the veteran or eligible person meets the eligibility requirements found in paragraph (a) of this section and if the veteran or eligible person:

(1) At the time the loan is authorized, is in attendance at an educational institution on at least a half-time basis, and

(i) Is enrolled in a course leading to a standard college degree, or

(ii) Is enrolled in a course, the completion of which requires 6 months or longer, leading to an identified and predetermined professional or vocational objective; unless the Director of the VA field station of jurisdiction waives these requirements, in whole or in part, upon determination that to do so is in the interest of the veteran or eligible person and the Federal Government as prescribed in § 21.4500; and

(2) Is in receipt of educational assistance allowance under section 1661 or subchapter II of chapter 35, title 38, United States Code; and

(3) Must be required to pay to the educational institution for tuition and fees an amount equal to or greater than an amount to be determined as follows:

(i) If the veteran or eligible person is enrolled in a course organized on a term basis, the amount shall be determined by multiplying $700 by ⅔ if the proposed loan period is 2 consecutive quarters, by multiplying $700 by ½ if the proposed loan period is one semester, or by multiplying $700 by ⅓ if the proposed loan period is either 1 quarter or is a term of 8 weeks or more, not part of the ordinary school year. The resulting figure is multiplied by 1 if the veteran or eligible person is a full-time student on the day the loan is authorized, by ¾ if the veteran or eligible person is a three-quarter time student on the day the loan is authorized or by ½ if the veteran or eligible person is a half-time student on the day the loan is authorized.

(ii) If the veteran or eligible person is not enrolled in a course organized on a term basis and the proposed loan period is 6 months in length, the amount shall be determined in the same manner as for a veteran or eligible person whose proposed loan period is 2 quarters.

(iii) If the veteran or eligible person is not enrolled in a course organized on a term basis and the proposed loan period is less than 6 months in length, the amount shall be:

(*a*) An average of $77 per month of the proposed loan period if the veteran is a full-time student on the day that the loan is authorized,

(*b*) An average of $57 per month of the proposed loan period if the veteran is a three-quarter time student on the day that the loan is authorized, or

(*c*) An average of $38 per month of the proposed loan period if the veteran is a half-time student on the day that the loan is authorized.

(38 U.S.C. 1798(g); Pub. L. 95-476; 92 Stat. 1497)

2. In § 21.4504, paragraph (a)(3) is revised to read as follows:

§ 21.4504 Promissory note.

(a) *General.* The agreement by the Veterans Administration to loan money pursuant to section 1798, title 38, United States Code, to any eligible veteran or eligible person shall be in the form of a promissory note which shall include:

* * * * *

(3) A note or other written obligation providing for repayment of the principal amount, and interest on the loan in annual installments over a period beginning 9 months after the date on which the borrower first ceases to be at least a half-time student and ending:

(i) For loans of $600 or more, 10 years and 9 months after such date, or

(ii) For loans of less than $600, 1 year and 7 months after such date for the first $50 of the loan plus 1 additional month for each additional $5 of the loan. (38 U.S.C. 1798; Pub. L. 95-476; 92 Stat. 1497)

* * * * *

[FR Doc. 79-34710 Filed 11-8-79; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL 1355-4]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability and request for comments.

SUMMARY: EPA recently proposed various amendments to its regulations relating to the review of new and modified sources of air pollution under the prevention of significant deterioration (PSD) and nonattainment provisions of the Clean Air Act. The notice of those proposals referred to a "revised version of the *Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)* * * *." See 44 FR 51943 (September 5, 1979). EPA here announces that a draft of that revised version is now available and that EPA will accept written comments on it until December 10, 1979.

DATE: The deadline for submitting written comments on the draft revision of the PSD monitoring guideline is December 10, 1979.

ADDRESSES: *Copies of the draft revision of the PSD monitoring guideline.* Copies of the draft revision may be obtained from Stan Sleva, the Monitoring and Data Analysis Division (MD-14), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711; 919/541-5351.

Comments on the draft revision. Any written comments on the draft revision should be sent (in triplicate, if possible) to the Central Docket Section (A-130), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-79-35. Any written comments on the draft revision may also be sent to Stan Sleva at the address given above.

FOR FURTHER INFORMATION CONTACT: Michael Trutna, Standards Implementation Branch (MD-15), Office of Air Quality Planning and Standards, Resesearch Triangle Park, N.C. 27711; 919/541-5292.

SUPPLEMENTARY INFORMATION: EPA recently proposed to amend its PSD regulations (40 CFR 51.24, 52.21(1978)) in response to a court decision that overturned them in major respects. At the same time, the agency proposed parallel amendments to its regulations relating to new source review under the nonattainment provisions of the Clean Air Act. The notice of proposed rulemaking appears at 44 FR 51924 (September 5, 1979). That notice states that guidance on some of the "monitoring situations addressed in (the notice) will be further described in a revised version of the *Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)*, OAQPS 1.2-096 * * * originally published in May 1978." 44 FR 51943. EPA has completed a draft of that revised version. It recently released the draft for public comment by sending a copy to each person who had previously requested one and by placing a copy in the docket for the rulemaking, Docket No. A-79-35. The docket is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, Room 2903B, 401 M Street, SW., Washington, D.C. A copy of the draft can also be obtained by contacting Stan Sleva of the Monitoring and Data Analysis Division at the address given above.

EPA will accept any written comments on the draft revision until December 10, 1979. Each comment should be sent (in triplicate, if possible) to the Central Docket Section (A-130), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A-79-35. Any comment may also be sent to Stan Sleva. Each comment should indicate the locations to which it has been sent.

The deadline for submitting written comments on the proposed amendments to the PSD and nonattainment regulations is still November 5, 1979. See 44 FR 57108 (October 4, 1979). The deadline for submitting information which rebuts or supplements any written comments on the proposals or any presentation at the recent hearings on them is still November 18, 1979. See 44 FR 57109. Any written comments on the proposals and any rebuttal and supplementary information should be sent (in triplicate, if possible) to the Central Docket Section at the address given above.

(Sec. 101(b)(1), 110, 114, 160-69, 301(a) and 307(d) of the Clean Air Act, as amended (42 U.S.C. 7401(b)(1), 7410, 7414, 7470-79, 7601(a) and 7607(d))

Dated: October 30, 1979.

David G. Hawkins,

Assistant Administrator, Air, Noise and Radiation.

[FR Doc. 79-34698 Filed 11-8-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1353-4]

Approval and Promulgation of State Implementation Plans; Proposed Rulemaking on Approval of Washington State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The 1977 Clean Air Act Amendments (the Act) requires states to revise their State Implementation Plans (SIP) to include provisions for attainment and maintenance of National Ambient Air Quality Standard (NAAQS) for those areas currently violating the air quality standards; Prevention of Significant Deterioration (PSD) plans for protecting those areas still with clean

air; and certain other general requirements of a statewide SIP (e.g. Section 128—State Boards). This notice presents the results of EPA's review of plans (commonly called non-attainment plans) developed by the State of Washington to comply with the requirements of Part D of the Act to ensure the attainment and maintenance of the NAAQS. The other general requirements of a statewide SIP will be addressed in a separate Federal Register notice currently being prepared. A PSD plan, requirements for which may be found in 40 CFR Part 51.24, is under development by the State and will be considered in separate action at a later date.

The requirements for an approvable Part D SIP revision are described in a general preamble published in the April 4, 1979, Federal Register (44 FR 20372), and will not be restated here. Additional explanation was published on July 2, 1979 (44 FR 38471), August 28, 1979 (44 FR 50371) and September 17, 1979 (44 FR 53761). In this notice, key events in the development of the Washington non-attainment SIP are described; the proposed SIP is summarized; problems interfering with SIP approval are discussed; and EPA's proposal for final rulemaking is presented for public comment.

In the case of Part D SIP revisions, the EPA review process can lead to three results:

1. Approval, outright, where the SIP or the portion under consideration meets all requirements:
2. Disapproval where deficiencies are of such magnitude as to significantly interfer with the basic objective; or
3. Approval with conditions, where deficiencies exist, but where the effect of the deficiency is not judged to be significant and where the State is taking steps to correct the deficiency.

EPA in its final rulemaking following this comment period will treat noted SIP deficiencies in one of two ways: (1) approval, without condition if the corrective action is complete, or (2) approval with condition where the state is proceeding with the correction but needs additional time.

To ensure the integrity of this approach, EPA is proposing July 1, 1980 (unless otherwise specified), as the outside date by which time all corrections should be adopted by the State and submitted to EPA. Comment is sought on the appropriateness of this date and of the basic approach.

The reader of this document should keep in mind that the Act presented a very complicated set of requirements which had to be met in a relatively short period of time. The Act also specified that many decisions regarding the selection of air pollution control strategies were to be made at the local governmental level and required considerable public participation. Establishing a process to generate the necessary local governmental and public input to major air quality decisions has been a difficult and time consuming task. Thus while this notice tends to focus on deficiencies in the proposed SIP, EPA feels the State of Washington and the participating local agencies should be commended for their efforts to date.

DATE: Comments must be received on or before December 10, 1979.

ADDRESSES: Written comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 629, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Coordination & Planning Section, M/S 625, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442-1226, FTS 399-1226.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction,

II. Background

III. Plan Review:

A. General Regulations:
1. New Source Review.
2. Volatile Organic Compounds.
3. Inspection/Maintenance.
4. Other Regulations.

B. Non-Attainment Area Plans:
1. Extention Request.
2. Carbon Monoxide/Ozone:
a. Seattle-Tacoma.
b. Spokane.
c. Vancouver.
d. Yakima.
3. Total Suspended Particulate:
a. Seattle-Tacoma.
b. Vancouver.
c. Spokane.
d. Clarkston.
4. Sulfur Dioxide:
a. Tacoma.

I. Introduction

The information in this notice is divided into two sections entitled "Background" and "Plan Review." The first section outlines the background leading to the development of the Washington SIP in relation to the Clean Air Act Amendments of 1977. The "Plan Review" portion is divided into two major sub-sections. The first, "General Regulations", discusses regulatory portions of the plan applicable to more than one non-attainment area, e.g., Volatile Organic Compounds (VOC), New Source Review (NSR), Inspection Maintenance (I/M), etc. The second sub-section, "Non-Attainment Plans", provides a description of each pollutant specific plan. Deficiencies, together with appropriate corrective actions and summarized at the end of each topical discussion.

II. Background

The Washington SIP revision was developed and submitted to EPA to satisfy the requirements of the Clean Air Act, as amended in 1977 and is intended to update the presently approved SIP. Specific requirements for an approvable Part D SIP are discussed in detail in the April 4, 1979, Federal Register (44 FR 20372), the "EPA/DOT Transportation Planning Guidelines" and the "Transportation SIP Checklist." (These documents are available at the address noted above.) Additional requirement for all SIPs are contained in 40 CFR Part 51.

In accordance with Section 174 of the Act, primarily responsibility for preparing carbon monoxide (CO) and ozone (O_3) control plans was delegated by the Governor to organizations of local elected officials. These designated organizations are the Puget Sound Air Pollution Control Agency (PSAPCA) for the Seattle-Tacoma O_3 and CO non-attainment area, the Spokane Regional Planning Conference (SRPC) for the Spokane CO non-attainment area, and the Clark County Regional Planning Conference (CCRPC) for the Vancouver O_3 non-attainment area. As a result of these designations, a description of responsibilities between the various state and local agencies involved in the planning process was developed. Designated lead agencies were generally responsible for transportation control plan development, while the State in general retained responsibility for stationary source control efforts.

The Governor also designated PSAPCA and SRPC responsible for total suspended particulate (TSP) plan development. The remaining control strategies for Port Angeles (TSP), Longview (TSP), Vancouver (TSP) and Yakima (CO) were the responsibility of the State Department of Ecology (DOE). In addition, the State, in accordance with recently enacted legislation, was made responsible for motor vehicle inspection/maintenance program development.

The locally prepared plans were submitted to DOE in November 1978 to be combined with the remainder of the State developed control strategies. Public hearings were held in December 1978.

After considering the multitude of comments presented by representatives of the public, industry and government, the DOE decided that major changes to portions of the draft SIP were necessary. As a result, a revised draft was developed and submitted informally to EPA for comment in March 1979. The EPA review comments were informally transmitted to DOE in conjunction with the April 19, 1979 public hearing to consider the final SIP. On April 26, 1979 the SIP was adopted by the DOE and submitted to EPA by Governor Ray on April 27, 1979.

III. Plan Review

This section is divided into two major sub-sections. The first, "General Regulations", briefly describes the regulatory portions of the plan applicable to more than one non-attainment area, e.g., Volatile Organic Compounds, New Source Review, Inspection/Maintenance, etc., and discusses the deficiencies and specifically states which category of action EPA is proposing to take. The second sub-section, "Non-Attainment Area Plans" discusses each area-pollutant-specific plan in terms of plan development; emission reduction required; control strategy proposed; deficiencies identified and corrective actions required, and EPA's proposal.

A. General Regulations

1. New Source Review (NSR): WAC 173-400-110, New Source Review, has in general, been satisfactorily revised to accommodate the requirements of Part D of the CCA. EPA is requesting, however, that the State revise its regulation to resolve certain remaining discrepancies between the proposed SIP and Part D requirements. These discrepancies, which are detailed below, are primarily associated with the failure of the SIP to regulate aluminum plants, pulp mills and energy related sources (e.g., power plants, refineries, etc.); relaxed permit requirements for major sources; and exemption of certain size facilities from NSR requirements. EPA proposes to conditionally approve these regulatory provisions contingent upon the State making the corrections implied by the nature of the following deficiencies:

a. *Variances.* WAC 173-400-110(3)(a). This section inappropriately exempts sources with approved variances from NSR procedures.

b. *Major Sources:*

(1) The definition of major sources does not satisfy Section 302(j) of the Act in that *all* sources with a potential emission equal to or greater than 100 TPY are not required to undergo NSR.

(2) WAC 173-400-110(1) as it refers to WAC 173-400-100, does not meet requirements of Part D of the Act because it exempts CO sources less than 1000 TPY. Part D requires all sources, including CO sources above 100 TPY emission potential, to be included in the permit review procedure. (Note: *The Alabama Power Co.* v. *Costle,* 13 ERC 1225 (D.C. Cir., June 18, 1979) decision may affect the disposition of this deficiency.)

c. *Multiple Sources Under Single Ownership.* WAC 173-400-110(6) should be modified to satisfy the requirement of Section 173(3) of the Act in that a permit to construct or operate a new source in a non-attainment area can only be issued if the other sources owned by the same company in that State are in compliance with the Act.

d. *Temporary Sources.* WAC 173-400-110(10) exempts temporary sources (1 year or less) from NSR, contrary to the Act. (Note: *The Alabama Power Co.* vs. *Costle,* 13 ERC 1225 (D.C. cir., June 18, 1979) decision may affect the disposition of this deficiency.)

EPA proposes to disapprove the regulatory provisions of WAC 173-400 which exempt Kraft and Sulfite Pulp Mills, and Primary Aluminum Plants from the permit requirements of Sections 172(b)(6) and 173 of the Act. State regulations for Kraft Pulp Mills (WAC 173-405), Sulfite Pulp Mills (173-410) and Primary Aluminum Plants (WAC 18-52) must be revised to require NSR for these facilities. Regulations for Energy Facilities (WAC 463-39) are currently under review. EPA proposed rulemaking covering the EFSEC Regulations will be handled as a separate action.

EPA also invites comment on whether it should promulgate NSR regulations for these source categories. The regulation would track very closely the language of Section 173 of the Act. Since EPA would have no discretion about the provisions there would be no need for a public hearing or additional public comment.

2. Volatile Organic Compounds (VOC):

Section 172(a)(2) and (b)(3) of the Act require existing sources to install, at a minimum, reasonably available control technology (RACT) in order to reduce emissions. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

EPA has developed Control Technique Guidelines (CTG) for the purpose of informing state and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. This information is designed to be useful to both control agencies and industry in defining appropriate RACT requirements for VOC sources within the State.

Along with information, each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT. This general statement of agency policy is based on EPA's current evaluation of the capabilities and problems general to the industry. Where the State finds the presumptive norm applicable to an individual source or group of sources, EPA recommends that the State adopt requirements consistent with the presumptive norm level. The State may, if it chooses, require controls different from those identified in the CTG as long as: (1) the percentage of emission reduction from each category of sources varies insignificantly (within 5% of controlled emissions); or (2) documentation is provided that the regulations do, in fact, represent RACT for that source(s).

Ozone attainment strategies, as discussed in the April 4 General Preamble, must include control of specified VOC sources (i.e., those for which CTGs were published prior to January 1, 1978) to the RACT presumptive norm level. Where simplistic modeling techniques (rollback, EKMA, or other methods less sophisticated than atmospheric dispersion modeling) are employed to demonstrate adequacy of the strategy for attainment beyond 1982, control of all sources covered by the CTGs is required. The State of Washington used rollback as a "first cut" effort to determine the minimum emission reduction needed and is thus required to adopt RACT regulations for the eleven source categories for which CTGs have been published to date. The State is also required to commit to the adoption of additional regulations as future CTGs are published. The next group of sources is presently scheduled to be covered by July 1980.

Deficiencies in Washington VOC Regulation WAC 173-490, are detailed below. EPA proposes to conditionally approve the VOC regulatory authority contingent upon the State taking corrective action in terms of the preceding discussion and as implied by the nature of each deficiency:

a. *Cold Cleaning Degreasers.* WAC 173-490. These sources, exempted from the proposed state regulations, must be controlled.

b. *Petroleum Refineries.* WAC 173-490-040. Refineries with a crude oil or feed stock capacity of less than 9000 barrels per day, and waste water separators with VOC emission less than

25 tons per year, proposed for exemption by the State, must be controlled.

c. *Bulk Gasoline Plants.* WAC 173-490-040. Sub-section (4)(e) must contain specific provisions for controlling vapor leaks occurring during loading and unloading of transport trucks.

d. *Gasoline Dispensing Facilities.* WAC 173-490-040(5). DOE regulations exempt gasoline dispensing facilities in major urban areas from the requirement of a vapor balance system when loading gasoline into existing stationary vessels of more than 10,000 gallons capacity if the throughput of the facility is less than 200,000 gallons per year. EPA believes that vapor balance systems should be required for all existing gasoline dispensing storage tanks of 2,000 gallon capacity or more regardless of throughput. EPA has promulgated such a requirement in the past under Section 110(c) of the Clean Air Act, e.g., 40 CFR 52.336, 52.787, and 52.1144. The widespread implementaton of vapor balance systems on tanks of 2,000 gallons or greater demonstrates that this control is reasonable.

e. *Surface Coating.* WAC 173-490-040(6). All sources including those less than 100 TPY, must be controlled consistent with the presumptive norm specified for these sources. Also the control requirements for flashoff and application areas, which emit a significant portion of VOC in the surface coating process, must be specified.

f. *Open Top Vapor Degreasers.* WAC 173-490-040(7). Three major areas of the CTG are not adequately addressed:

(1) Open top vapor degreasers with less than one square meter of vapor-air interface must be regulated.

(2) Open top vapor degreasers with a freeboard ratio greater than 0.75 must have a power operated cover.

(3) There must be a method specified for disposal of waste solvent.

g. *Conveyorized Degreasers.* WAC 173-490-040(7). A "major control device" on conveyorized degreasers with greater than a two square meter air-vapor interface must be required. In addition, a method must be specified for the disposal of waste solvent.

h. *Cutback Ashphalt.* WAC 173-490-040(9): The regulation prohibits the use of cutback asphalt during June, July, August, and September unless the temperature is below 50 degrees fahrenheit. Information justifying this time period for prohibited use must be provided. In addition, methods for determining compliance with the temperature requirement must be part of the SIP.

i. *Schedule of Control.* WAC 173-490-070:

(1) All dates for control of regulated sources are tied into EPA's acceptance of the regulation. This is an approvable provision only if the word "acceptance" can be equated to conditional approval.

(2) Control schedules for small refineries are more than twice as long as those recommended in the CTG. This time frame must be reduced.

j. *Exemption of Methyl Chloroform and Methylene Chloride.* The Washinton Regulations include exemptions for methyl chloroform and methylene chloride. The exemption is based on the fact that these compounds are photochemically unreactive and therefore do not play a significant role in ozone formation. Thus, the Washington VOC regulation is approvable insofar as this exemption is concerned. However, both compounds may be subject to future regulation, not to meet the O_3 NAAQS, but because of evidence that they may be a direct health hazard. This possibility is stated here to put persons, who may take advantage of the exemptions, on notice regarding the possibility of future controls before conversion decisions are made.

3. Inspection/Maintenance (I/M):

A vehicle "Inspection/Maintenance" (I/M) program is a key element in both the O_3 and CO emission control strategies for the State of Washington. I/M refers to a program whereby motor vehicles receive preriodic inspections to assess the efficiency of fuel combustion and functioning of their exhaust emission control systems. Vehicles which have excessive emissions must then undergo mandatory maintenance. Generally, I/M programs include passenger cars, although other classes can be incuded as well. Operation of noncomplying vehicles is prohibited. This is most effectively accomplished by requiring proof of compliance to purchase license plates or before vehicle registration. In some cases, a windshield sticker system may be used, much like many safety inspection programs.

Section 172 of the Clean Air Act requires that SIP revisions for non-attainment areas meet certain criteria. For areas which do not demonstrate attainment of standards for ozone or carbon monoxide by the end of 1982, despite the implementation of reasonably available measures, an extension up to 1987 may be granted. However, as a requirement to obtaining a post 1982 attainment date, the plan must not only meet the above referenced criteria, but "the plan provisions shall establish a specific schedule for implementation of a vehicle emission control inpsection and maintenance program * * *" [CAA 172(b)(11)(B)]

On February 24, 1978, EPA issued guidance on the general criteria for SIP approval including I/M. On July 17, 1978, the specific criteria for I/M SIP approval was issued. Both of these items are part of the SIP guidance material referred to in the General Preamble for Proposed Rulemaking 44 FR 20373 at note 6. Though the July 17, 1978 guidance should be consulted for details, the key elements for I/M SIP approval are summarized below. Also, included under each sub-heading is an evaluation of the State's compliance with these requirements.

• *Legal Authority.* Where I/M is required under Section 172 of the Act, States or local governments were required to adopt the statutes, regulations, ordinance, etc., necessary to establish the program by June 30, 1979. (Section 172(b)(10) and EPA guidance referenced above.)

The requirement for legal authority was satisfied by the Legislative passage, and subsequent signing on May 11, 1979, by Governor Ray, of HB 298. This newly enacted law directs the Department of Ecology to administer a vehicle inspection program in areas where such a program is necessary to attain the air quality standards. The law also prohibits the Department of Licensing from renewing vehicle licenses unless such vehicles have satisfied the requirements of the inspection program.

• *Commitment.* The appropriate governmental units must be committed to implement and enforce the I/M program. [Section 172(b)(10)].

The legal authority noted above defines the responsibilities of affected state agencies. As this responsibility is assigned by state law, no further commitments are required.

• *Resources.* The necessary finances and resources to carry out the I/M program must be identified and committed. [Section 172(b)(7)].

The Washington I/M program is designed to be self-supporting once mandatory inspections are initiated. The State Legislature in conjunction with passage of the I/M enabling legislation, authorized $500,000 in state funds to support program staffing and start-up costs until the mandatory phase is reached. In addition, EPA has committed $500,000 in federal funds to assist the State in its start-up effort. These resources appear sufficient at this time to cover all program needs.

• *Schedule.* A specific schedule to establish the I/M program must be included in the State Implementation Plan. [Section 172(b)(11)(B)]. Interim milestones are specified in the July 17, 1978 memorandum in accordance with

the general requirement of 40 CFR 51.15(c).

The Washington DOE has established a detailed schedule for implementing the I/M program and is moving aggressively to stay on schedule. Key milestones in the schedule are summarized below:

1. Release "Request for Proposal" for public education program.	Nov. 15, 1979.
2. Release "Request for Proposal" for construction and operation of inspection facilities.	Jan. 15, 1980.
3. Award contract for operation of public education program.	May 1, 1980.
4. Award contract for construction and operation of inspection facilities.	June 15, 1980.
5. Establish stringency factors, emission limits, etc.	Oct. 1980.
6. Start voluntary I/M program	Jan. 1, 1981.
7. Start mandatory I/M program	Jan. 1, 1982.

The above schedule was developed subsequent to passage of the I/M enabling legislation and is therefore not part of the State law. EPA therefore proposes to approve the Washington I/M program conditioned upon the formal commitment to submit the new schedule as part of the SIP and to complete the activities as scheduled above.

• *Program Effectiveness.* As set forth in the July 17, 1978 memo, the I/M program must achieve a 25% reduction in passenger car exhaust emissions of hydrocarbons and a 25% reduction for carbon monoxide. This reduction is measured by comparing the levels of emission projected to December 31, 1987, with and without the I/M program. This is not a specific requirement of the Act but is EPA's policy based on Section 172(b)(2) which states that "the plan provisions * * * shall * * * provide * * * for the implementation of all reasonably available control measures * * *"

The Statute mandating the Washington I/M program specifies that the DOE will develop test standards so that no more than 30% of all vehicles inspected will be required to undergo maintenance at a cost not to exceed $50.00. These limiting factors were developed to deal primarily with a CO problem, since O_3 analysis originally showed attainment by 1982. However, more recent modeling and analysis indicates that O_3 attainment will be beyond 1982.

Preliminary estimates indicate that while the 25% program effectiveness criteria can be achieved for CO, it will be extremely difficult to achieve the regional HC emission reduction within the present limits. EPA therefore proposes to conditionally approve the Washington I/M program with respect to stringency contingent upon the State either (1) demonstrating compliance with the program effectiveness criteria for both CO and HC or (2) if shown to be necessary, commiting to a schedule for revising the I/M legal authority to enable the program to achieve a minimum 25% effectiveness for both pollutants.

The Washington I/M program will affect only the major urban areas of the State currently violating the air quality standards for transportation related pollutants, i.e., the greater Seattle-Tacoma metropolitan area, Vancouver, and probably Spokane. The State Department of Licensing will notify each vehicle owner who must have his car inspected 90 days prior to expiration of that vehicle license.

Inspections will be conducted by one or more private contractors chosen by the State on the basis of competitive bids. While the actual inspection fee will be determined by the bids received, state law limits the fee to a maximum of $10.00. Owners or leasees of fleets may be authorized by DOE to inspect their own vehicles provided they meet rigid quality assurance criteria.

All gasoline powered vehicles licensed for use on the State's highways will be required to undergo inspections except new cars before initial transfer of title, vehicles 15 years old or older, motorcycles, and farm vehicles. Diesels are also exempted. Vehicles failing the inspection must be repaired and reinspected. Vehicles failing the reinspection after repair may be issued a certificate of acceptance if the vehicle owner can demonstrate that he has spent at least $50.00 for parts and repairs solely devoted to meeting the emission standard. The DOE will also institute a comprehensive mechanic training program in cooperation with the service industry to upgrade the mechanic's capability to adequately repair the vehicles at minimum cost.

In summary, the State has made impressive progress to date in establishing a viable vehicle inspection/maintenance program. EPA therefore proposes to approve this portion of the Washington SIP conditioned upon the State (1) updating the SIP to reflect the passage of the enabling legislation, and (2) submitting the detailed I/M schedule, developed by the I/M advisory committee, as part of the SIP, (3) demonstrating the achievement of the required minimum level of effectiveness for CO and HC, and (4) if necessary committing to a schedule revising the I/M legal authority to enable the achievement of the minimum 25% program effectiveness for HC and CO.

4. Other Regulations:

This sub-section addresses a variety of important regulatory issues arising as a result of SIP revisions mandated by Part D of the Act. While many of the regulations discussed herein are incorporated in WAC 173-400, others are not easily categorized and are included in this sub-section for convenience. Certain of these are approvable as submitted and require no corrective action by the State but are discussed here so that the public many be aware of the requirements posed by these regulations. EPA proposes to approve these regulatory provisions with conditions as noted below.

a. *Combined Emissions.* WAC 173-400-040—Certain provisions of WAC 173-400 involve a seven percent oxygen correction factor to be applied to "combustion emissions" in relation to enforcement of emission limitations [Sections 040(1)(b) and 040(6)(b)]. The application of the O_2 correction factor must be defined in terms applying it to emissions where combustion emission streams are combined with non-combustion emission streams. Also for purposes of determining compliance the method by which separate, applicable emission standards would apply to separate emission streams combined in a single stack must be defined.

b. *Source Test Procedures.* To maintain SIP enforceability, source test procedures for each emission limitation must be included in the SIP, or the SIP must contain specific reference to a properly identified source test method which is submitted for the record along with the SIP itself. The reference would normally include the title, number (if the method is coded), and the date of the appropriate version of the method(s).

c. *No Burn Areas.* WAC 173-425. Description of no burn areas, as part of the TSP control strategies, must be submitted as part of the SIP.

d. *Replacement of Existing Regulations.* EPA is proposing to update the currently approved regulations except as described below. EPA is deferring action until the State submits information demonstrating that replacement of the following regulatory provisions will not impair attainment and maintenance of NAAQS:

(1) *Sensitive Areas.* WAC 18-06. Certain areas of the State were designated as sensitive areas and have more stringent emission standards for wigwam burners.

(2) *Grass Seed Field Burning.* WAC 18-16.

(3) *Primary Aluminum Plants.* WAC 18-52. The proposed SIP does not include the opacity limitations of WAC 18-52-031(3).

(4) PSAPCA Regulation I Section 9.07(c) 90% limitation on input sulfur.

e. *Permits to Operate.* Sections 172 and 173 of the Act require the plan to contain requirements for construction and operating permits for proposed new

or modified sources in non-attainment areas. The permit program shall require that construction and operating permits be issued only if (a) emissions from the proposed source will not prevent reasonable further progress in attaining NAAQS, (b) the proposed source is required to comply with the lowest achievable emission rate, and (c) the owner or operator of the proposed source has demonstrated that major stationary source of the same ownership are in compliance, or on a schedule for compliance, with all requirements of the Act.

WAC 173-400 contains provisions (a) and (b) but not (c). EPA is proposing approval of this part of the plan conditioned on the addition of part (c) of the Section 173 permit requirements. (See previous discussion of this topic under New Source Review.)

g. *Indirect Source Regulation.* The Washington Indirect Source Regulation (WAC 18-24) was submitted as a SIP revision November 21, 1974 and was subsequently repealed by the State on June 26, 1975. EPA initially proposed to delete the program from the SIP on August 1, 1975 (40 CFR 32347), based on a request from the State.

Section 110(a)(5)(A)(iii) of the Act as amended now allows the State to remove its indirect source regulations from the SIP without further demonstration of standards attainment. Therefore as part of this action EPA is reproposing to rescind WAC 18-24.

B. Non-Attainment Area Plans

The non-attainment area plans will be discussed in groups by pollutant. Each discussion will provide a brief description of the area, predicted attainment dates, extensions requested, control measures proposed, and any problems that would interfere with SIP approval.

In most non-attainment areas there are Regional Air Pollution Control Authorities responsible for developing and implementing their own control strategy. The DOE, however, has elected to include State regulations in the SIP as the basis for non-attainment control strategy implementation, except where more stringent local regulations are needed for purposes of attainment and maintenance of NAAQS.

1. Extension Requests:

a. CO/O_3: Under Section 172(a)(2) of the Act, the State has requested an extension of the attainment date for carbon monoxide and ozone for the Seattle-Tacoma area. Extension requests for Spokane (CO) and Vancouver (O_3) may be made after revisions to the air quality analyses are completed. If this extension is granted, the SIP must demonstrate (a) expeditious attainment (Sections 178(a)(2) and 178(11)(C)); (b) implementation of inspection and maintenance (Section 172(b)(11)(B)); (c) a program for the analysis of alternative sites (Section 172(b)(11)(A)); (d) a commitment to expand public transportation (Sections 110(a)(3)(D) and 110(c)(5)(B)); and (e) application of all reasonably available control measures (RACM) to stationary and mobile sources.

The SIP demonstrates attainment for CO by 1984. The O_3 attainment strategy is being reanalyzed in order to properly define the attainment date. Adoption of inspection and maintenance and commitment to expand public transportation are adequately demonstrated.

EPA proposes to approve the extension of the Seattle-Tacoma area as requested. EPA proposes to approve the Seattle-Tacoma 03 SIP conditioned upon the State revising it to include procedures to undertake an alternative site analysis as required by Section 172(b)(11)(A) of the Act.

b. TSP (Secondary): Under Section 110(b) of the Act, the State has requested an extension of the date for submittal of plans of the attainment secondary TSP standards. As required by 40 CFR 51.31, the State has demonstrated that attainment of the secondary standard will require emission reductions exceeding those which can be achieved through application of reasonably available control technology. After proposing approval of the State's request (44 FR 29499) and receiving no comments, EPA approved the extension on July 30, 1979 (44 FR 44497).

In approving these extensions, EPA recognizes that the secondary TSP SIPs, now due July 1, 1980, will have to be developed in terms of the modified strategy development schedules proposed for certain primary standard attainment SIPs (see the TSP non-attainment plan discussions for Seattle-Tacoma and Spokane).

2. Carbon Monoxide/Ozone:

Under Section 172(a)(2), if the State requests an extension of the attainment dates for CO and O_3 beyond the end of 1982, the plan must meet specific requirements. Part IV-D of the Washington SIP requests extension of the attainment date for CO and O_3 (even though initial simplistic modeling indicated attainment by 1982 for O_3) in Seattle-Tacoma, but not for Vancouver or Spokane, pending further analysis. Requirements of this analysis, and the schedule for its completion, are discussed under the Spokane and Vancouver areas of this document.

a. Seattle-Tacoma Area (CO and O_3)—(1) Background. The Seattle-Tacoma non-attainment ares for CO and O_3 includes parts of three counties—King, Pierce, and Snohomish—and the major cities of Seattle and Tacoma. Actual air quality violations have been measured at several locations throughout the area. However, rather than identifying a number of small "hot spot" non-attainment areas, a larger "management area" was designated non-attainment. This management area encompasses both the actual problem areas and the points from which the traffic creating the problem originates. For CO, this area extends north to Marysville, east to Issaquah, south to Spanaway and west to Puget Sound. The ozone area is slightly larger.

The designated lead agency for this area is the Puget Sound Air Pollution Control Agency (PSAPCA). PSAPCA worked with the Puget Sound Council of Governments (which serves as the local Metropolitan Planning Organization), the Washington Department of Transportation, the Federal Highway Administration, and the DOE in developing this plan. Public participation was realized through action by the Citizens Committee on Transportation Control Planning. This public group met nine times during the second half of 1978 to develop Transportation Control Plan recommendations.

The control strategy for achieving the NAAQS in this area consists of measures to reduce emission from both stationary (i.e, industrial) and transportation sources. Transportation sources typically account for over 90% of the CO emissions within this area and up to 60% of VOC emissions. This section discusses only the transportation control measures. For information on stationary source requirements, particularly as it relates to attainment of ozone standards, the reviewer should refer to the appropriate preceding sections on general regulations.

(2) Emission Reduction Required. For CO, the maximum hot spot emission reduction required is 50% in the Seattle Central Business District (CBD). Attainment of the NAAQS no earlier than 1984 is predicted by the use of EPA approved modeling techniques. The proposed CO control strategy is briefly discussed in the next section, entitled "Control Strategy."

For O_3, preliminary projections estimated that only a 17% emission reduction would be necessary to ensure attainment of the one-hour ozone

standard by 1982. However, errors have been discovered in some of the rollback modeling assumptions utilized to make this projection. Since receipt of the SIP by EPA, the State has indicated (1) its intent to refine the ozone modeling by the use of a more sophisticated model and (2) its decision to apply the results of that model to the VOC strategy. Because the data from this more sophisticated model will replace initial modeling projections, EPA is not requiring the State to correct the technical deficiencies noted on the initial analysis. This decision is intended to allow the State to devote maximum resources to upgrading its technical analysis. The reviewer of this document should be aware that the more sophisticated model will, in all likelihood, project an attainment date well past 1982 and a consequent need for significantly greater VOC emission reductions to meet the O_3 standard. (It is anticipated that the I/M program can provide part of VOC emission reductions needed.)

(3) Control Strategy. Carbon monoxide, primarily a transportation related pollutant, is to be controlled by teh transportation measures outlined below. Ozone, on the other hand, is to be controlled by reducing VOC emissions from both transportation and stationary sources. The stationary source control measures have been previously outlined in the "Volatile Organic Compounds" section and will not be reiterated here.

The reviewer of this section should keep in mind that measures designed to reduce vehicle emissions work in either of two ways: (a) by reducing vehicle usage, i.e., improved mass transit, carpooling, etc, or (b) by reducing the emission from individual vehicles, i.e., inspection/maintenance, traffic flow improvements, etc. Both techniques are generally applicable to reducing both CO and O_3.

The overall control strategy includes implementation, to one degree or another, or increased utilization, of the following transportation measures by 1982:

(1) Inspection and maintenance (See preceding discussion on this topic)
(2) Improved public transit
(3) Exclusive bus and carpool lanes
(4) Long range transit improvements
(5) Park/ride and fringe parking lots
(6) On street parking controls
(7) Traffic flow improvements
(8) Area wide ride—sharing programs
(9) Bicycle lanes and storage, pedestrian facilities
(10) Road pricing to discourage single occupancy autos

Other potential measures to be evaluated by mid-1980 for possible implementation by 1982 include:

(1) Flextime/staggered hours/4 day work week
(2) Employer programs: ride sharing, transit usage
(3) Restriction of parking supply in areas of high vehicular usage
(4) Standardization of off-street parking rates to minimize vehicle cruising
(5) Land use control to benefit air quality
(6) Controls on extended vehicle idling
(7) Accelerate current committed strategies
(8) Metro transition and Tacoma transit study

(4) Deficiencies/Conditions. The CO/O_3 SIP for Seattle-Tacoma addresses all the requirements contained in the EPA–DOT Transportation—Air Quality Guidelines Checklist. There are well defined roles for the lead agency and other agencies involved in transportation planning. These roles are further exemplified in the Unified Planning Work Program and associated long and short range planning elements.

In summary, EPA proposes conditional approval of the CO/O_3 SIP. Conditons for the Seattle-Tacoma area applicable to the CO/O_3 SIP have been previously specified in sections of this notice covering deficiencies dealing with NSR (A.1.e), I/M (A.3.), VOC (A.2.) and extention requests (B.1.a.).

b. Spokane CO—(1) Background. The Spokane non-attainment area is confined to a small portion of the CBD and major traffic corridors. The designated lead agency is the Spokane Regional Planning Conference (SRPC). The SRPC worked closely with the Spokane County Air Pollution Control Authority, the Washington Department of Transportation, the Federal Highway Administration and the DOE in developing this plan. Citizen participation was realized through the citizen advisory committee and four public hearings. Involvement of elected officials occurred at both the city and county levels through their participation in public hearings and interdepartmental and advisory committees.

(2) Emission Reduction. The attainment analysis was conducted using an EPA approved model and predicts attainment of the 8-hour standard by 1982 through implementation of reasonably available control measures without I/M. The total reduction required to achieve the standard is 57%. The initial emission reductions projected to result from the control strategy discussed below (approximately 59–68% by 1983) was felt by EPA to be excessive. The air quality analysis upon which this prediction was based is judged by EPA to be technically inadequate. The Spokane Regional Planning Conference is currently revising the technical analysis to correct these deficiencies. This reanalysis is due to be completed by December 15, 1979. It is EPA's judgment that attainment of the CO standard by December 31, 1982 is doubtful; if this proves correct, an inspection and maintenance program will be necessary.

(3) Control Strategy. Carbon monoxide, primarily a transportation related pollutant, is to be controlled by the transportation measures outlined below. In order to reduce emissions from mobile sources two different approaches can be taken. The first approach is to reduce vehicle usage (e.g. miles travelled.)

The second approach is to reduce the emissions from individual vehicles (i.e. inspection and maintenance). Measures scheduled for implementation or already wholly or partially implemented include the following:

(1) Joint use of Park and Ride lots	1/1979
(2) Remote Park and Ride lots	1980
(3) Fringe parking lot program/Shuttle bus service	1979
(4) On street parking controls	1979
(5) Staggered work hours	1/1980
(6) Computerized synchronization of traffic controls	9/1979
(7) Major construction projects:	
(a) Hamilton Street Bridge	
(b) North Foothill Drive	1982

Other measures to be evaluated by mid-1980 for possible implementation before 1983 include:

(8) Other traffic flow improvements	1979–1980
(9) Expanded marketing program for transit system	1979
(10) Downtown transit terminal	1979–1983
(11) Bus ridership incentive program	1/1979
(12) Employer program to encourage car and vanpooling and use of mass transit	1979
(13) Controls on Extended Vehicle Idling	1979
(14) Fleet Vehicle Controls	1980
(15) Loading Zone Usage and other Controls	1979
(16) Provision of "High Occupancy" Vehicle Facilities	2/1979
(17) County Enforcement of Prohibitions on Excessive Emissions	1979
(18) Bikeways and Provision of Storage Facilities for Bicycles	1/1979
(19) Public awareness of air pollution	1/1979

(4) Deficiencies/Conditions. The Spokane Transportation Control Plan (TCP) addresses most of the items contained in the EPA guidance. However, there are certain dificiencies in the proposed plan that require correction. Currently SPRC is revising the plan to correct these problems. Accordingly, EPA proposes to approve the Spokane TCP based upon the following conditions:

(a) An air quality reanalysis must be completed by December 15, 1979. Major portions of the reanalysis include the inventory of emissions related to

parking, emission reduction credits, and a schedule for I/M implementation if the reanalysis shows attainment beyond 1982.

Failure to submit a technically sound analysis by this deadline would seriously jeopardize federal funding in Spokane.

(b) The plan must include evidence of adoption by public hearing including notice and summary of comments and disposition of comments. Evidence of a A-95 Clearinghouse review is also required.

(c) The plan must include a commitment to fund projects for the purpose of expanding and improving public transit.

c. Vancouver (O_3)—*(1) Background.* The Vancouver non-attainment area is part of the larger Vancouver, Washington-Portland, Oregon interstate non-attainment area. It includes the cities of Vancouver and Camas, both in Clark County.

The Vancouver O_3 plan was developed through the joint efforts of the Clark County Regional Planning Council (CCRPC) and the Portland Metropolitan Service District. The CCRPC is the designated lead agency for the Vancouver plan. Other agencies involved in the plan development include the Oregion Department of Environmental Quality, DOE, Southwest Air Pollution Control Authority, the Washington Highway Commission and the Federal Highway Administration.

Public and government official participation was realized through involvement of city and county officials and selected private citizens in the Air Quality Advisory Committee which met on a biweekly basis for several months prior to the public hearing for plan approval.

(2) Emission Reduction. Using an approved EPA modeling technique the initial air quality analysis indicates that a 50% reduction in 1977 Volatile Organic Compound emissions will be needed to meet the 0.12 ppm federal ozone standard. The exact attainment date has not been determined but will be identified as part of the correction of plan deficiencies scheduled to be completed by December 1979.

(3) Control Strategy. Ozone is controlled by reducing emissions of VOC's from both transportation and stationary sources. The stationary source control measures have been previously outlined in the "Volatile Organic Compounds" section and will not be reiterated here. The required emission reductions from mobile sources are to be derived from the Federal Motor Vehicle Emission Control Program and the following transportation control measures:

(1) Inspection maintenance
(2) Improved public transit
(3) Exclusive bus and carpool lanes
(4) Areawide carpool programs
(5) Long-range transit improvements
(6) Parking controls
(7) Park and ride lots
(8) Pedestrian malls
(9) Employer programs to encourage carpooling and vanpooling
(10) Traffic flow improvements
(11) Bicyle program
(12) Expanded bus service on I-5 corridor

It is important to note that the technical analysis applies to the entire Vancouver-Portland interstate area and that most of the above measures are to be implemented in Portland only.

(4) Deficiencies/Conditions. The Vancouver Transportation Control Plan addresses most of the items contained in the EPA guidance. However, there are certain deficiencies in the proposed plan that require correction. Accordingly, EPA proposes to conditionally approve the Vancouver O_3 plan contingent upon correction of the deficiencies outlined below.

The plan must be revised by December 1979 to properly address several important provisions outlined in the EPA-DOT Air Quality-Transportation Planning Guidelines, including a Vancouver specific inventory of VOC emissions; a clear definition of transportation planning roles, a schedule for the comprehensive analysis of alternatives; identification of resources necessary to carry out the plan; evidence of adequate public and elected official participation in the plan development; provisions for progress reporting; and, if warranted, a schedule to implement I/M if O_3 attainment beyond 1982 is verified. Failure to complete the revisions by the above deadline could lead to restriction of federal funding for the area.

d. Yakima CO—(1) Background. The Yakima non-attainment area is confined to a fourteen square block area bounded by the following streets: Front, D, Third, and Walnut.

(2) Emission Reduction. The attainment analysis was conducted using a simple rollback modeling approach. The total reduction required to achieve the CO standard (28%) is predicted by 1982 based solely on the Federal Motor Vehicle Emission Control Program. Therefore, Yakima is projected to be in attainment of the CO standard prior to December 31, 1982.

(3) Control Strategy. The Federal Motor Vehicle Emission Control Program is projected to result in the required reduction in emissions necessary to attain the standard in a reasonable time frame. Additional measures include central business district (CBD) parking and traffic flow improvements. The establishment of a transportation planning process will insure that future air quality considerations are addressed on an annual basis.

(4) Deficiencies/Conditions. EPA proposes to approve the Yakima CO attainment plan with no conditions.

3. Total Suspended Particulate: Control strategies discussed in this section are designed to enable each non-attainment area to attain the *primary* NAAQS (75 ug/m^3) for TSP. Section 110(b) of the Act allows up to an 18-month extension in time for the development of a plan to attain the secondary NAAQS of 60 ug/m^3, provided that the State can show that attainment of the secondary standard will require emission reductions exceeding those which can be achieved through the application of reasonably available control technology (RACT). The State of Washington on April 4, 1979 requested such an extension based upon the determination that all existing sources were currently meeting the RACT requirement. EPA proposed to approve the extension request on May 21, 1979 (44 FR 29499), and, in the absence of any public opposition, gave final approval on July 30, 1979 (44 FR 44497).

Due to the potential promulgation of a new particulate matter standard by 1981, EPA has recently provided the State and local agencies further guidance in determining when to implement costly controls for non-traditional sources that may not be necessary to meet a revised standard. It now appears that most, if not all, of the proposed control strategies discussed in this section would still be required to attain a new standard. However, until future requirements are better defined some cities may choose to defer actual implementation of the more costly strategies for control on non-traditional sources.

a. Seattle-Tacoma—(1) Background. The designated area in Seattle for primary standard violations includes the north portion of the Duwamish River industrial area, and extends to the southern boundary of the CBD. The Tacoma non-attainment area for primary violations standards includes the Tideflats industrial area, the eastern portion of the CBD and the northern portion of South Tacoma Way corridor. Both of these areas are within the jurisdiction of the Puget Sound Air Pollution Control Agency (PSAPCA), the

designated lead agency for TSP plan development.

(2) Emission Reductions Required. Based on rollback model calculations, emission reductions required to meet the primary annual NAAQS are as follows: Seattle, 33%; Tacoma, 31%.

These figures incorporate emissions growth estimates which were determined for each source classification.

(3) Control Strategies. The proposed control strategies are based on a proportional rollback model. EPA agreed that rollback would be acceptable as an interim approach with the understanding that dispersion modeling would be conducted in the future. Development of the required model is currently in progress.

Part IV-B of the SIP indicates that, in general, all stationary sources of TSP are employing RACT level control. Non-traditional sources of TSP are felt to be the major problem at this time. DOE intends, however, to conduct a review of sources on a case-by-case basis to determine if further controls on stationary sources are reasonable.

(4) Deficiencies/Conditions. EPA proposes to approve the Seattle-Tacoma TSP SIP revision with the following conditions:

(a) The text of Section V-A the plan must be rewritten to be internally consistent with Section IV-B.

(b) By July 1980 the State must commit, at a minimum, to the following schedule for examining control alternatives:

(1) Determine the nature and source of the TSP problem. Activities should include particle size monitoring and evaluation of potential control strategies.	December 1980.
(2) Develop control strategy and obtain all legal commitments necessary to ensure attainment of primary NAAQS by statutory deadline of December 1982.	July 1981.
(3) Complete implementation of control strategy.	December 1982.

b. Vancouver—(1) Background. The designated area is confined to a small portion of the industrial port area covering about one square kilometer. The problem appears to be caused by a single point source, which is currently under compliance order issued by the Southwest Air Pollution Control Authority.

(2) Emission Reductions Required. The SIP discusses impact of emissions from the above source on air quality at the location of the monitor showing violation of NAAQS. An approximate 90% control of process emissions and 80% control of fugitive emissions from the subject source is expected from currently scheduled plant modifications. However, the SIP does not specifically define the emission reduction required to meet standards.

(3) Control Strategy. An EPA approved model (CDMQC) shows a 54% contribution to the ambient particulate concentration from the single point source previously discussed. EPA agrees that control of this source should result in attainment of at least the primary NAAQS. However, the Reasonable Further Progress (RFP) line submitted by the State does not agree with emission inventory projections.

(4) Deficiencies/Conditions. EPA proposes to approve this SIP revision with the following conditions:

1. An emission inventory and RFP analysis will be completed showing emission reductions to be achieved by the industrial source and emission increases that are expected to occur between 1977 and the attainment date as a result of growth on the area.

2. A modeling analysis will be performed by the State assuring compliance with Part D requirements and relating the emissions defined in condition #1 to the air quality levels at the non-attainment monitors.

c. Spokane—(1) Background. The designated non-attainment area consists of a large portion of the CBD with an extension to the east to include a light industrial area. The plan was developed by the Spokane Regional Planning Council (lead agency) with considerable assistance from the Spokane County Air Pollution Control Authority.

(2) Emission Reductions Required. Proportional rollback modeling predicts a 51% reduction in emissions will be needed to attain the primary annual TSP standard. Much of the problem has been attributed to non-traditional sources—primarily unpaved roads and parking lots and resuspended dust from paved streets.

(3) Control Strategy. The SIP contains formal commitments to obtain needed reductions by the following actions:

(a) Paving roads

(b) Paving parking lots

(c) Sweeping and flushing streets

(d) Increasing the no burning zone, and

(e) Applying RACT on point and fugitive sources

Approximately 60% of the required emission reduction is to be achieved by the paving of roads. A majority of the remaining dust will be controlled by the paving of parking lots. The city adopted, by resolution, a schedule for completing the necessary street paving, in conjunction with interim dust palliative treatment for the streets. A parking lot paving regulation was also adopted by Spokane County Air Pollution Control Authority. This was done with the understanding that such control measures were required for attainment of the primary standard by the 1982 statutory date.

As a result of the further guidance given to local agencies on when costly non-traditional TSP control strategies, such as street paving, must be implemented, Spokane has indicated that the strategy identified in the SIP is likely to be delayed until future requirements for a new particulate matter standard are defined. This decision by Spokane is, in part, a reflection of the difficulty expected in establishing a street paving program. Street paving in Spokane is accomplished through the formation of Local Improvement Districts (LID), normally initiated by petition by the property owners along the street. This requires the property owners to pay for the paving and thus may not be feasible. LIDs are formed by resolution (with the cost partially or wholly borne by the city) only when required. Since EPA's present posture is to proceed with caution regarding immediate implementation of an extensive program for street paving for attainment of ambient particulate standards, Spokane may be reluctant to retain their commitment to the schedule presently specified in the SIP.

(4) Deficiencies/Conditions. As noted earlier, formal commitments to obtain the required emission reductions are a part of the SIP. EPA, therefore, proposes to approve the Spokane TSP control strategy with the following conditions:

(a) The text of Section V-B of the Plan should be rewritten to be internally consistent with Section IV-B. The rollback calculations and required emission reductions are correct, but the supporting documentation needs to be modified to agree with the rollback analysis.

(b) By July 1980, the State must submit, at a minimum, a schedule to examine control alternatives consistent with the following:

(1) Determine the nature and source of the TSP problem. Activities should include particle size monitoring and evaluation of potential control strategies	12/1980
(2) Develop control strategy and obtain all legal commitments necessary to ensure attainment of NAAQS by statutory deadline of December 1982	7/1981
(3) Complete implementation of control strategy.	12/1982

d. Clarkston—(1) Background. The designated area is part of the Clarkston, Washington—Lewiston, Idaho Interstate non-attainment area. The Clarkston portion is defined by the city limits. Major contributors to the non-attainment problem are rural fugitive dust, unpaved roads and parking lots, and point and area sources located in Lewiston.

Clarkston, in light of its low population and lack of significant industrialization, would ordinarily qualify for attainment status under

EPA's rural fugitive dust policy (in spite of TSP NAAQS violations). However, as Clarkston shares a small, confined air shed with the more industrialized Lewiston, Idaho, area, the non-attainment designation is at this time applicable to both cities. EPA will review the Clarkston non-attainment status once the Idaho Department of Health and Welfare (IDHW) and the City of Lewiston complete a study currently underway to define nature and source of the TSP problem in Lewiston.

(2) *Emission Reductions Repaired.* Rollback calculations identify the need for a 30% reduction in emissions in order to meet the primary standard of 75 $\mu g/m^3$.

(3) *Control Strategy.* Measures include:

(a) Emission reductions from Lewiston sources, particularly the large kraft pulp mill.

(b) Application of RACT to fugitive dust sources in downtown Clarkston. A three year plan for paving road shoulders and alleys, signed by the mayor, is indicative of this community's commitment to controlling sources located in their portion of the non-attainment area.

(4) *Deficiencies/Conditions.* EPA proposes to approve the Clarkston TSP control strategy conditional upon a future reevaluation (and modification, if necessary) of the strategy by the State based upon the results of the joint IDHW/Lewiston TSP study.

4. SO_2—*a. Tacoma.* The designated area is a parabolic-shaped area extending approximately 3 and ½ miles south-southwest from the ASARCO Copper Smelter. Based on a stipulated agreement between EPA and ASARCO entered in the United States Court of Appeals for the Ninth Circuit, EPA has proposed redesignation of this area to "unclassifiable" (44 FR 45970). This redesignation is intended to defer the requirement for a Part D SIP revision until EPA completes rulemaking action on Section 123 of the Clean Air Act. Therefore, EPA is not making a proposal at this time on the State-submitted Part D non-attainment SIP revision. The existing approved SIP will remain in effect.

Interested parties are invited to comment on all aspects of the approvability of Washington SIP. In particular, comments are requested on the appropriateness of the findings on issues discussed above, the suggested corrective actions, and the approvability of the SIP with respect to the applicable requirements.

Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice. Public comments received by December 10, 1979, will be considered in EPA's final decision in the SIP.

All comments received will be available for inspection at the Region 10 Office, 1200 Sixth Avenue Seattle, Washington 98101.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

(Sections 110 (a) and 172 of the Clean Air Act (42 U.S.C. 7410 (a) and 7502))

Dated: September 25, 1979.

Donald Dubois,
Regional Administrator.

[FR Doc. 79-34807 Filed 11-8-79; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 5734]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. R., Gregg Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Room 5148, 451 7th Street SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4 (a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Arkansas	City of Altheimer, Jefferson County.	Flat Bayou	Just downstream of Main St.	*206
			Just downstream of Main St.	*207
		Drainage Ditch East of School	Approximately 100 feet upstream of Second Street	*199

Maps available at: City Hall, P.O. Box F, Altheimer, Arkansas 72004.

Send comments to: Mayor Bill Jones or Grover Davis, P.O. Box 160, Altheimer, Arkansas 72004.

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arkansas	City of Wynne, Cross County	Turkey Creek	Just upstream of Arkansas State Highway 1	*258
			Just upstream of County Rd.	*261
		Indian Creek	Just upstream of Missouri Pacific Railroad	*258
			Just downstream of Arkansas State Highway 1	*265
		Turkey Creek Lateral	Just upstream of E Street	*245
			Just downstream of Missouri Pacific Railroad	*250
			Just downstream of Arkansas State Highway 1 (North State Street)	*258
		Caney Creek Lateral No. 5	Just upstream of Ash Street	*251
			Just upstream of South Rowena Street	*261
Maps available at: Building Inspections Department, City Shop, 1306 N. Falls, Wynne, Arkansas 72396.				
Send comments to: Mayor James Luker or Betty Slocum, Secretary, Building Inspections Department, City Shop, 1306 N. Falls, Wynne, Arkansas 72396.				
Connecticut	Noank Fire District, New London County.	Fishers Island Sound	Entire Coastline	*11
		Eccleston Brook	Brook Street	*11
			Upstream Private Drive (270' downstream of State Route 215)	*14
			Downstream State Route 215	*14
			Upstream State Route 215	*20
			Downstream Private Drive (400' downstream of Corporate Limits)	*27
			Corporate Limits	*32
Maps available at: The Fire House.				
Send comments to: Mr. Frank Socha, Acting Executive Officer, Noank Fire District, P.O. Box 483, Noank, Connecticut 06340.				
Louisana	Unincorporated areas, Lafayette Parish.	Coulee Mine	Just downstream of southern Pacific Railroad	*35
			Just upstream of Highway 723	*38
		Grand Avenue Coulee	Just upstream of U.S. Highway 167	*28
			Just downstream of of Guilbean Road	*29
		Breaux Bridge	Just upstream of LA Highway 94	*30
		Jupiter Coulee	Just upstream of Louisiana Highway 94	*34
			Approximately 400 feet downstream of Center Street	*36
		Francois Coulee	Just upstream of Moss Street	*24
			Just downstream of of Point Des Mouton Road	*33
		Coulee Bend	Just upstream of Moss Street	*28
			Just upstream of Southern Pacific Railroad	*39
		Gaston Coulee	Just upstream of Southern Pacific Railroad	*34
			Approximately 750 feet downstream of Point Des	*40
		Coulee Des Poches	Just upstream from Industrial Parkway	*18
			Just downstream of Aymar Comeaux Road	*24
		Vermillion River	Just upstream of Interstate 10	*17
			Approximately 150 feet downstream of Beau Bassin Road	*19
		Coulee Mine Lateral No. 1	Approximately 400 feet upstream of Eraste Landry Road	*34
			Just downstream of U.S. Highway 90	*36
Maps available at: Lafayette Parish Manager's Office, Courthouse Building, Fifth Floor, Lafayette, Louisiana 70502.				
Send comments to: Mr. Overton Menard, President, Lafayette Parish Police Jury, or Mr. George Landry, Parish Manager, Lafayette Parish Courthouse Building, P.O. Box Drawer 4500, Lafayette, Louisiana 70502.				
New Jersey	Borough of Hawthorne, Passaic County.	Passaic River	Lincoln Avenue Upstream	*43
			Confluence with Goffle Brook	*44
			Upstream Corporate Limits	*45
		Goffle Brook	Wagaraw Road Downstream	*44
			Diamond Bridge Avenue Downstream	*60
			Warburton Avenue Downstream	*69
			Rea Avenue Downstream	*82
			Bailey Temporary Bridge at Goffle Hill Road Upstream	*106
			Lafayette Avenue Upstream	*113
			South Bound Ramp Rt. 208 Upstream	*118
			North Bound Ramp Rt. 208 Upstream	*120
			Rock Road Upstream	*133
		Deep Brook	Goffle Road Upstream	*111
			Union Street Downstream	*124
			Route 208 Upstream	*179
			Upstream Corporate Limits	*204
Maps available at: The Municipal Building.				
Send comments to: Honorable Louis Bay, III, Municipal Building, 15 Garfield Avenue, Hawthorne, New Jersey 07506.				
New Jersey	Borough of Stratford, Camden County.	North Branch Big Timber Creek	Downstream Corporate Limits	*16
			Confluence of Quaker Run	*24
			Downstream of Dam near Laurel Mill Road	*25
			Upstream of Dam near Laurel Mill Road	*32
		Signey Run	Confluence with North Branch Big Timber Creek	*16
			Approximately 3,000 feet upstream of confluence with North Branch Big Timber Creek.	*30
			Warwick Road	*44
Maps available at: The Borough Hall.				
Send comments to: The Honorable Frank W. Strauss, Mayor of Stratford, Borough Hall, 307 Union Avenue, Stratford, New Jersey 08084.				
New York	Town of Chemung, Chemung County.	Chemung River	Downstream Corporate Limits (200 feet downstream of State Route 17 crossing).	*778
			540 feet downstream from confluence of Dry Brook	*787
			Confluence of Wynkoop Creek	*791
			Upstream side of Wynkoop Creek Road crossing	*801
			Upstream side of Conrail crossing	*806

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream side of State Route 17 (final upstream crossing)	*815
			Confluence of Baldwin Creek	*820
		Wynkoop Creek	Confluence with Chemung River	*791
			Upstream side of Conrail crossing	*804
			Upstream side of Old Route 17 crossing	*808
			Upstream side of County Highway 50 crossing	*833
			1st downstream side crossing of Wynkoop Creek Road	*863
			Downstream side of the second downstream crossing of Wynkoop Creek Road.	*880
			Upstream side of Clark Road crossing	*920
		Baldwin Creek	Confluence with Chemung River	*820
			State Route 17 Bridges (upstream side)	*829
			Confluence of Hoffman Hollow	*832
			South of intersection of Lowman Road and Corporate Limits	*845
Maps available at: The Town Hall.				
Send comments to: Mr. Arthur Robinson, Supervisor of the Town of Chemung, County Road 60, Box 45, Chemung, New York 14825.				
New York	Town of Corning, Steuben County	Whiskey Creek	Upstream Fram Lane	*918
			10,000 feet upstream of confluence with Chemung River	*979
			12,200 feet upstream of confluence of Chemung River	*1,010
		Chemung River	1,000 feet upstream from Corporate Limits	*899
			Upstream Confluence of Whiskey Creek	*918
			Upstream State Route 17 adjacent to Gorton Creek	*921
			Upstream State Route 17	*931
Maps available at: The Town Clerk's Office, Town Hall, Corning, New York.				
Send comments to: Mr. Howard Clark, Supervisor of the Town of Corning, Clark and Elm Streets, Town Hall, Corning, New York 14830.				
New York	Village of Scottsville, Monroe County.	Oatka Creek	Downstream Corporate Limits	*532
			Upstream Corporate Limits	*538
		Mill Race	Confluence with Oatka Creek	*538
			Private Drive Culvert (upstream)	*547
			Approximately 650 feet upstream of Caledonia Avenue	*552
Maps available at: The Village Hall.				
Send comments to: Honorable Richard J. Susat, Mayor of Scottsville, Village Hall, 22 Main Street, Scottsville, New York 14546.				
Oklahoma	City of Catoosa, Rogers County	Spunky Creek (Backwater from Verdigris River.	Just upstream of northernmost corporate limits	*575
		Spunky Creek	Approximately 200 feet upstream of U.S. Highway 66	*575
		Spunky Creek Tributary	Approximately 75 feet upstream of U.S. Highway 66	*601
Maps available at: City Hall, 101 South Cherokee, Catoosa, Oklahoma 74015.				
Send comments to: Mayor Curtis Conley, City Hall, 101 South Cherokee, Catoosa, Oklahoma 74019.				
Pennsylvania	Township of Allison, Clinton County.	West Branch Susquehanna River.	Downstream Corporate Limits	*569
			Downstream Corporate Limits	*576
		Bald Eagle Creek	Upstream of Route 220 Bridge	*567
			Upstream Corporate Limits	*567
		Sugar Run	Downstream of State Route 120	*569
			Upstream of Township Route 398	*570
			Upstream Corporate Limits	*621
		Lusk Run	Downstream Corporate Limits	*653
			Downstream of Private Road	*695
			Upstream Corporate Limits	*718
Maps available at: The residence of Mr. Francis Johnson, 420 Irwin Street, Lock Haven, Pennsylvania 17745.				
Send comments to: Mr. Francis Johnson, Chairman of the Township of Allison, 420 Irwin Street, Lock Haven, Pennsylvania 17745.				
Pennsylvania	Township of Black Creek, Luzerne County.	Nescopeck Creek	300 feet downstream of Interstate Route 80	*627
			200 feet upstream of Legislative Route 40012	*645
		Black Creek	200 feet downstream of Legislative Route 40010	*793
			Confluence with Tributary to Black Creek	*807
			Park Street (Extended)	*819
			Church Street (Extended)	*839
			Township Route 322 (extended)	*848
			6,800 feet upstream Legislative Route 40010	*876
			8,950 feet downstream of Mine Access Road	*965
			7,000 feet downstream of Mine Access Road	*990
			3,000 feet downstream of Mine Access Road	*1,040
			Mine Access Road (Upstream)	*1,067
			1,000 feet upstream of Mine Access Road	*1,099
		Tributary to Black Creek	Confluence with Black Creek	*807
			Park Street (Upstream)	*818
			Private Drive 1,100 feet upstream of Park Street (Upstream)	*837
			Pine Street (Upstream)	*881
			Church Street (Upstream)	*890
			Abandoned Railroad (Upstream)	*924
			150 feet upstream of Abandoned Railroad	*935
Maps available at: The Township Building, Rock Glen, Pennsylvania.				
Send comments to: Mr. H. Donald Brior, Chairman of the Township of Black Creek, Rock Glen, Pennsylvania 18246.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Borough of Braddock, Allegheny County.	Monongahela River	Downstream Corporate Limits	*738
			Upstream Corporate Limits	*739
Maps available at: The Borough Building.				
Send comments to: Mr. John H. Craver, President of the Borough Council of Braddock, Municipal Building, 415 6th Street, Braddock, Pennsylvania 15104.				
Pennsylvania	Borough of Eldred, McKean County.	Allegheny River	Downstream Corporate Limits	*1,445
			Confluence of Canfield Creek	*1,446
		Barden Brook	Confluence with Allegheny River	*1,445
			Bennett Street	*1,446
			Upsteam Corporate	*1,453
		Canfield Creek	Downstream Corporate Limits	*1,446
			Upstream Corporate	*1,448
Maps available at: The Borough Office.				
Send comments to: Honorable Layton Howell, Mayor of Eldred, 184 Main Street, Eldred, Pennsylvania 16731.				
Pennsylvania	Township of Eldred, McKean County.	Allegheny River	Downstream Corporate Limits (State Boundary)	*1,439
			State Route 346	*1,445
			Confluence of Canfield Creek	*1,446
		McCrea Run	Confluence with Allegheny River	*1,440
			400 feet downstream of Bullis Mill Road	*1,451
			340 feet upstream of Bullis	*1,460
		Mix Creek	Confluence with Allegheny River	*1,443
			2,360 feet upstream of Legislative Route 42021	*1,458
		Indian Creek	Confluence with Allegheny River	*1,444
			6,200 feet above confluence	*1,453
		Knapp Creek	Confluence with Allegheny River	*1,445
			1,550 feet upstream of Township Route 395	*1,449
		Windfall Hollow	Confluence with Knapp Creek	*1,445
			Loop Road (Downstream)	*1,453
		Potato Creek	Confluence with Allegheny River	*1,448
			Corporate Limits	*1,448
Maps available at: The residence of Mr. Ernest Cook.				
Send comments to: Mr. Donald Goodwin, Chairman of the Township of Eldred, R.D. No. 1, Eldred, Pennsylvania 16731.				
Pennsylvania	Township of Lake Luzerne County.	Harveys Creek	Downstream Corporate Limits	*1,099
			Upstream of Bryant Pond Dam	*1,113
			Confluence of Paint Spring Run	*1,113
			1,800 feet upstream of confluence of Paint Spring Run	*1,116
		Pikes Creek	Downstream Corporate Limits	*1,127
			Upstream of State Route 29	*1,136
			Upstream of State Route 118	*1,159
			Upstream of Private Drive on Pikes Creek	*1,178
			Upstream of Legislative Route 40065	*1,221
		Fades Creek	Confluence w/Pikes Creek	*1,137
			Upstream of State Route 29	*1,143
			Upstream of Township Route 706	*1,176
			Upstream of Township Route 673	*1,218
			1,350 feet upstream of Township Route 673	*1,234
		Beaver Run	Upstream of Township Route 760	*1,095
			Upstream of Township Route 673	*1,114
			Upstream of the Private Drive .5 miles south of Legislative Route 40062 on State Route 29.	*1,143
			300 feet upstream of Private Drive off State Route 29 which is 400 feet north of Legislative Route 40063.	*1,197
Maps available at: The Township Building.				
Send comments to: Mr. Stewart Lamoreaux, Chairman of the Board of Supervisors of Lake, R.D. No. 1, Sweet Valley, Pennsylvania 18656.				
Pennsylvania	Township of Lawrence, Tioga County.	Tioga River	Mechanic Street, Township Route 46 (Upstream)	*992
			Williamson Road (Downstream)	*995
			Williamson Road (Upstream)	*1,000
			Conrail 1,500 feet upstream from Williamson Road (Upstream)	*1,002
			Township Route 328	*1,004
			Upstream Corporate Limits	*1,012
		Cowanesque River	Downstream Corporate Limits	*998
			5,150 feet upstream Corporate Limits	*1,003
		Harts Creek	Confluence with Tioga River	*1,002
			Abandoned railroad bridge 170 feet upstream of Williamson Road (Upstream).	*1,004
			Pit-access Road (Upstream)	*1,060
			Private Drive 10,740 feet upstream of mouth (Upstream)	*1,126
			11,680 feet upstream of mouth	*1,144
		Smith Creek	Confluence with Hartz Creek	*1,002
			Williamson Road, U.S. Route 15 (Upstream)	*1,003
			3,280 feet upstream of mouth	*1,066
Maps available at: The Township Building.				
Send comments to: Mr. Edward R. Farr, Chairman of the Township of Lawrence, R.D. No. 1, Lawrenceville, Pennsylvania 16929.				
Pennsylvania	Millersburg, Borough Dauphin County.	Susquehanna River	Downstream Corporate Limits	*383
			Confluence of Shippens Run	*385
		Wiconisco Creek	Confluence with Susquehanna River	*384

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
		Tributary No. 1 to Wiconisco Creek.	Downstream Corporate Limits	*405
			Center Street (Downstream)	*448
			Center Street (Upstream)	*456
			Mann Drive (Upstream)	*464
			Upstream Corporate Limits	*506
		Little Wiconisco Creek	Downstream Corporate Limits	*401
			Upstream Corporate Limits	*424
Maps available at: The City Manager's Office, Municipal Building, Millersburg, Pennsylvania.				
Send comments to: Mr. Raymond Baer, President of the Council of Millersburg, 739 Church Street, Millersburg, Pennsylvania 17061.				
Pennsylvania	Township of Newtown, Delaware County.	Crum Creek	West Chester Pike (Upstream)	*219
			Shimer Lane (Upstream)	*229
			Goshen Road (Upstream)	*244
			Upstream Corporate Limits	*265
		Darby Creek	Downstream Corporate Limits	*251
			Paper Mill Road (Upstream)	*268
			Dam (Upstream)	*288
			St. Davids Church Road	*291
		Foxes Run	Downstream Corporate Limits	*247
			Swim Club entrance (Upstream)	*280
			Approximately 1,050 feet upstream of Swim Club exit	*303
		Lewis Run	Confluence with Crum Creek	*241
			Crum Creek Road (Downstream)	*253
			Crum Creek Road (Upstream)	*256
			Battle Lane (Downstream)	*275
Maps available at: The Township Building, Bishop Hollow, Ellis Avenue, Newtown Square, Pennsylvania.				
Send comments to: Mr. Paul D. West, Township Manager of Newtown, P.O. Box 393, Newtown Square, Pennsylvania 19073.				
Pennsylvania	Township of Rice, Luzerne County.	Big Wapwallopen Creek	Downstream Corporate Limits	*1,063
			County Road, Blytheburn Road (Upstream)	*1,088
			Legislative Route 40112 (Upstream)	*1,136
			Legislative Route 40024 (Upstream)	*1,265
			Upstream Corporate Limits	*1,346
Maps available at: The Township Fire House.				
Send comments to: Mr. Harold Benning, Chairman of the Board of Supervisors of Rice, Box 122, R.D. 4, Mountain Top, Pennsylvania 19797.				
Pennsylvania	Township of Robeson, Berks County.	Schuylkill River	Downstream Corporate Limits	*170
			Confluence of Indian Corn Creek	172
			Gibralter Road crossing upstream	*175
			Upstream Corporate Limits	*178
		Allegheny Creek	Confluence w/Schuylkill River	*176
			1st downstream Conrail crossing	*181
			Upstream State Route 568 crossing (Green Hill Road)	*242
			Selon Road crossing upstream	*306
		Hay Creek	Private Road Bridge downstream	*317
			Upstream Rock Hollow Road crossing	*331
			Confluence of Beaver Run	*339
			Upstream Corporate	*350
		Seidel Creek	Confluence w/Schuylkill River	*174
			Old River Road crossing	*182
		Cold Run	Downstream Corporate Limits	*358
Maps available at: The Township School and the Township Police Station, R.D. 3, Birdsboro, Pennsylvania.				
Send comments to: Mr. Lloyd Huyett, Sr., Chairman of the Township of Robeson, R. D. 1, Mohnton, Pennsylvania 19540.				
Pennsylvania	Township of Tioga, Tioga County.	Tioga River	Downstream Corporate Limits	*1,012
			Confluence of Bently Creek	*1,017
			Old U.S. Route 15 bridge	*1,023
			Park Street (upstream)	*1,030
			Base of Tioga Dam	*1,034
		Mitchell Creek	Confluence with Tioga River	*1,013
			U.S. Route 15 (upstream)	*1,030
			Private Bridge approximately 2,770 feet upstream of Private Drive Bridge.	*1,067
			Confluence with Tioga River	*1,074
		Bently Creek	Old U.S. Route 15 (upstream)	*1,026
			Upstream Limit of Study 3,950 feet above mouth	*1,098
		Bear Creek	Confluence with Tioga River	*1,022
			T-722 (upstream)	*1,027
			Conrail (upstream)	*1,074
			Limit of Study 5,360 feet above mouth	*1,118
		Crooked Creek	Confluence with Tioga River	*1,023
			Cowanesque Street (upstream)	*1,033
			McAllister Road (upstream)	*1,036
			New Route 287 (upstream)	*1,053
			Old Route 287 (upstream)	*1,055
			Base of Hammond Dam	*1,055
		Elkhorn Creek	Confluence with Crooked Creek	*1,054
			Conrail/Legislative Route 287 Box Culvert (downstream)	*1,074
			Conrail/Legislative Route 287 Box Culvert (upstream)	*1,085
			Upstream Corporate Limits	*1,178
		Mill Creek	Confluence of Mill Creek and Tioga Lake (Proposed)	*1,133
			Pickle Hill Road (downstream)	*1,212
			Pickle Hill Road (upstream)	*1,217
			Upstream Corporate Limit	*1,235

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Painter Run	Confluence with Mill Creek	*1,217
			Mill Creek Road (upstream)	*1,222
			Painter Run Road (upstream)	*1,371
			Upstream Corporate Limit	*1,374
Maps available at: The residence of Ms. Susan Brown, R.D. 1, Tioga, Pennsylvania.				
Send comments to: Mr. Edward Patterson, Chairman of the Township of Tioga, Box 28, R.D. 1, Tioga, Pennsylvania 16946.				
Pennsylvania	Township of Wright, Luzerne County.	Big Wapwallopen Creek	Downstream Corporate Limits	*1,064
			County Road (upstream)	*1,083
			Confluence of Bow Creek	*1,233
			Upstream Corporate Limits	*1,346
		Watering Run	Confluence with Big Wapwallopen Creek	*1,070
			Private Road (upstream)	*1,186
			Legislative Route 40023 (upstream)	*1,220
			State Route 309 (Downstream)	*1,343
			State Route 309 (Upstream)	*1,349
			Approximately 2,820' upstream of State Route 309	*1,410
		Bow Creek	Confluence with Big Wapwallopen Creek	*1,233
			Legislative Route 40023 (Upstream)	*1,270
			State Route 309 (25' upstream)	*1,327
Maps available at: The Township Building, 321 South Mountain Boulevard, Mountain Top, Pennsylvania 18707.				
Send comments to: Mr. Allen Bayley, Chairman of the Board of Supervisors of Wright, 321 South Mountain Boulevard, Mountain Top, Pennsylvania 18707.				
Texas	Unincorporated Area of Medina County.	Seco Creek	Just downstream of U.S. Highway 90	*880
			USGS Gaging Station at Rowe Ranch	*935
		Parkers Creek	Just upstream of Farm Road 2000 (downstream crossing)	*856
			Just upstream of Southern Pacific Railroad	*897
		East Branch Live Oak Creek	Just upstream of U.S. Highway 90	*890
		West Branch Little Live Oak Creek.	Just downstream of the City of Hondo corporate limits	*885
		Little Live Oak Creek	Just upstream of Farm Road 462	*852
		Elm Slough	Just downstream of the City of Hondo corporate limits	*860
		Hondo Creek	Just upstream of Farm Road 2676	*859
			Just upstream of Farm Road 689	*879
		Hondo Tributary	Just upstream of Farm Road 689	*869
		Medina River	Just upstream of LaCoste Road	*699
			Just downstream of the southern corporate limits of the City of Castroville.	*739
			Just upstream of the northern corporate limits of the City of Castroville.	*761
		Kempf Creek	Just upstream of Lower LaCoste Road (Farm Rd. 471)	*718
		Polecat Creek	Just upstream of City of LaCoste corporate limits (approximately 1300 feet upstream of Southern Pacific Railroad).	*710
		South Polecat Creek	Just upstream of the Western corporate limits of the City of LaCoste	*728
		Flat Creek	Just upstream of LaCoste Road (Farm Road 471)	*757
		Little Sous Creek	Just upstream of U.S. Highway 90	*755
		San Francisco Perez Creek	Just upstream of Farm Road 2200	*652
			Just upstream of Farm Road 1343	*686
		Burnt Boot Creek	Just upstream of the City of Pevine corporate limits	*658
		Chalon Creek	Just upstream of Missouri Pacific Railroad (northern corporate limits of the City of Natalia).	*674
		Fort Ewell Creek	Just upstream of Missouri Pacific Railroad (northern corporate limits of the City of Natalia.	*680
		Tehuacana	Just upstream of Farm Road 462	*639
			Just upstream of Farm Road 2200	*655
		West Fork Tehuacana Creek	Just upstream of Farm Road 462	*666
			At the confluence with West Fork Tehuacana Creek	*667
		West Tehuacana Creek	Just upstream of Farm Road 462	*649
			Just upstream of Farm Road 2200	*680
		West Tehuacana Tributary	Just downstream of Farm Road 2200	*733
Maps available at: Medina County Courthouse, Hondo, Texas 78861.				
Send comments to: Judge Jerome H. Decker or Sid Malone, Admin. Asst., Medina County Courthouse, Hondo, Texas 78861.				
Texas	City of San Marcos, Hays County.	San Marcos River	Approximately 350 feet upstream of Cheatham Street	*578
			Just upstream of Water St	*582
		Sink Creek	Approximately 350 feet downstream of Bert Brown Road	*586
		Purgatory Creek	Approximately 200 feet upstream of Guadolupe St	*580
			Just upstream of Mitchell Avenue	*584
		Willow Springs Creek	Approximately 250 feet upsteam of Lyndon B. Johnson Street	*580
			Approximately 250 feet downstream of Ellis Street	*586
		Unnamed Tributary of Cottonwood Creek.	Approximately 250 feet downstream of Interstate 35	*628
		Blanco River	Just downstream of the Intersection of Crepe Myrtle St. and Pecan Street.	*600
Maps available at: Public Work's Office, City Hall, 630 E. Hopkins, San Marcos, Texas 78666.				
Send comments to: Mayor John Hansen or Ray Kotowski, Acting City Manager, City Hall, 630 E. Hopkins, San Marcos, Texas 78666.				
Texas	City of Tyler, Smith County	West Mud Creek	Just upstream of U.S. Highway 69 (South Broadway)	*461
			Just upstream of Shilo Road	*476
			Just upstream of New Copland Road	*482
		Tributary A	Just upstream of Rice Road	*478
		Tributary B	Just upstream of New Copland Road	*481
			Just upstream of Paluxy Drive	*505
		Tributary C	Just downstream of South Broadway	*496
			Just upstream of Fair Lane	*512

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Black Fork Creek	Just downstream of westbound Loop 323	*440
			Just upstream of U.S. Highway 271	*466
			Just downstream of St. Louis Southwestern Railway	*468
			Just upstream of St. Louis Southwestern Railway	*490
			Just upstream of Erwin Street	*491
		Tributary D	Just downstream of St. Louis Southwestern Railway	*472
			Just upstream of St. Louis Southwestern Railway	*478
			Just downstream of East Locust Street	*507
		Willow Creek	Just downstream of Westbound Loop 323	*457
		Willow Creek	Just upstream of Westbound Loop 323	*461
Maps available at: City Clerk's Office, City Hall, 212 North Bonner, Tyler, Texas 75710.				
Send comments to: Mayor Robert M. Nall, or Ed Wagoner, City Manager, City Hall, P.O. Box 2039, Tyler, Texas 75710.				
Texas	City of Waxahachie, Ellis County	Waxahachie Creek	Approximately 40 feet upstream of Matthews Street	*530
			Approximately 90 feet upstream of Rogers Street	*533
			Just upstream of Confluence of Tributary 1	*536
			Approximately 30 feet downstream of Brookside Road	*549
			Approximately 80 feet downstream of I-35E	*555
		Waxahachie Creek Tributary 1	Approximately 30 feet downstream of Cantrell Street	*538
			Approximately 40 feet downstream of northbound access Road to I-35 Southbound Lane.	*574
		Tributary 2	At Interstate HWY I-35E	*544
		Tributary 3	Just downstream of the I-35E Culvert	*611
		Mustang Creek	Just downstream of F.M. 878	*566
			Approximately 60 feet upstream of Broadhead Road	*577
			At confluence of Mustang Creek Tributary	*584
			Just upstream of FM 813	*595
		Mustang Creek Tributary	Approximately 150 feet upstream of Farm Road 813	*595
			Just upstream of Chapman Park Bridge	*599
Maps available at: City Hall, 401 South Roger, Waxahachie, Texas 75165.				
Send comments to: Mr. James Davis, City Manager or Mr. Jack Matthews, City Engineer, City Hall, P.O. Box 757, Waxahachie, Texas 77682.				
Virginia	Hanover County	Chickahominy River	State Route 615	*78
			Upstream U.S. Route 360	*92
			Upstream Chessie System	*97
			Upstream State Route 301	*105
			Upstream Interstate 95	*120
			Upstream U.S. Route 1	*133
			Upstream State Route 713	*160
			Upstream Chickahominy Dam	*172
			Upstream U.S. Route 33	*186
			Downstream State Route 624	*208
		Beaverdam Creek	Confluence with Chickahominy River	*81
			Upstream State Route 156	*96
			Upstream State Route 360	*108
			Upstream State Route 643	*124
			Downstream Woodbridge Road	*130
		Stony Run	Upstream State Route 656	*125
			Upstream State Route 661	*145
			Upstream U.S. Route 1	*153
			Upstream U.S. Route 660	*176
			Downstream Railroad Grade	*195
			State Route 626	*208
		North Anna River	Confluence with South Anna & Pamunkey River	*60
			Upstream State Route 30	*68
			Upstream Interstate 95	*81
			Upstream Route 1	*83
		Totopomoy Creek	Upstream State Route 615	*77
			Upstream State Route 643	*92
			Downstream State Route 606	*104
			Upstream State Route 606	*113
			Upstream U.S. Route 301	*134
			Upstream Chessie System	*149
			Downstream State Route 656	*169
		Mechumps Creek	Confluence with Pamunkey River	*46
			Upstream U.S. Route 301	*60
			Upstream Chessie System	*78
			Upstream State Route 796	*115
			Upstream State Route 656	*178
			Downstream Interstate 95	*191
		South Anna River	Confluence with North Anna & Pamunkey Rivers	*60
			Upstream Interstate 95	*70
			Confluence of Newfound River	*81
			Confluence of Stagg Creek	*90
			State Route 656	*104
			Downstream State Route 54	*110
		Little River	Confluence with North Anna River	*64
			Upstream State Route 689	*71
			Upstream U.S. Route 1	*80
			Downstream State Route 638	*95
Maps available at: The Hanover County Planning Office.				
Send comments to: Mr. John E. Longmier, County Administrator, Hanover County Courthouse, Hanover, Virginia 23069.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Washington	Chelan County, Unicorporated Areas.	Wenatchee River	Burlington Northern Raiload (Rivermile 0.94) 100 feet downstream from centerline.	*629
			Irrigation Siphon (Rivermile 1.3) 210 feet upstream from centerline	*630
			Sleepy Hollow Road (Rivermile 3.28) 200 feet upstream from centerline.	*657
			Main Street (Rivermile 5.88) 25 feet downstream from centerline	*697
			Old Monitor Road (Rivermile 7.12) 75 feet downstream from centerline.	*717
			Cottage Avenue (Rivermile 9.65) 150 feet downstream from centerline	*758
			Cottage Avenue (Rivermile 9.65) 50 feet upstream from centerline	*761
			Division Street (Rivermile 10.43) at centerline	*771
			Goodwin Road (Rivermile 11.57) 100 feet upstream from centerline	*806
			Burlington Northern Raiload (Rivermile 13.96) 200 feet downstream from centerline.	*855
			Burlington Northern Raiload (Rivermile 13.96) 100 feet upstream from centerline.	*856
			Burlington Northern Raiload (Rivermile 13.96) 400 feet upstream from centerline.	*859
			U.S. Routes 2 and 97 (Rivermile 15.1) 180 feet downstream from centerline.	*880
			U.S. Routes 2 and 97 (Rivermile 15.1) 400 feet upstream from centerline.	*885
			Main Street (Rivermile 16.68) 125 feet upstream from centerline	*924
			U.S. Routes 2 and 97 (Rivermile 16.84) 50 feet downstream from centerline.	*927
			U.S. Routes 2 and 97 (Rivermile 16.84) 80 feet upstream from centerline.	*930
			U.S. Routes 2 and 97 (Rivermile 17.44) 125 feet upstream from centerline.	*946
			Irrigation Diversion Dam (Centered at Rivermile 18.09) 490 feet downstream from centerline.	*968
			Irrigation Diversion Dam (Centered at Rivermile 18.09) 750 feet upstream from centerline.	*980
			Main Street (Rivermile 20.5) 75 feet downstream from centerline	*1027
			Irrigation Siphon (Rivermile 23.49) at centerline	*1064
			U.S. Route 2 (Rivermile 24.71) 80 feet downstream from centerline	*1097
			Icicle Road (Rivermile 27.27) 50 feet upstream from centerline	*1117
			Burlington Northern Railroad (Rivermile 41.89) 150 feet upstream from centerline.	*1763
			River Road (Rivermile 46.2) 50 feet downstream from centerline	*1818
			River Road (Rivermile 46.2) 50 feet upstream from centerline	*1820
			State Route 209 (Rivermile 46.42) 200 feet upstream from centerline	*1823
			State Route 207 (Rivermile 54.06) at centerline	*1877
		Mission Creek	Burlington Northern Railroad (Rivermile 0.151) 100 feet downstream from centerline.	*786
			Sunset Avenue (Rivermile 0.20) at centerline	*787
			Mission Creek Road (Rivermile 0.92) 80 feet downstream from centerline.	*830
			Mission Creek Road (Rivermile 0.92) 60 feet upstream from centerline	*833
			Mission Creek Road (Rivermile 1.02) 50 feet downstream from centerline.	*839
			Mission Creek Road (Rivermile 1.02) 90 feet upstream from centerline	*843
			Mission Creek Road (Rivermile 1.21) 25 feet downstream from centerline.	*853
			Mission Creek Road (Rivermile 1.65) 50 feet downstream from centerline.	*882
			Mission Creek Road (Rivermile 1.65) 50 feet upstream from centerline	*889
			Private Drive (Rivermile 2.275) 25 feet upstream from centerline	*932
			Private Drive (Rivermile 2.404) 25 feet upstream from centerline	*942
			Private Drive (Rivermile 2.598) 25 feet downstream from centerline	*954
			Private Drive (Rivermile 3.005) 25 feet downstream from centerline	*983
			Private Drive (Rivermile 3.355) 20 feet upstream from centerline	*1010
			Private Drive (Rivermile 3.583) 10 feet downstream from centerline	*1029
			Private Drive (Rivermile 3.745) 10 feet upstream from centerline	*1046
			Private Drive (Rivermile 3.862) at centerline	*1055
			Mission Creek Road (Rivermile 4.38) 80 feet downstream from centerline.	*1100
			Mission Creek Road (Rivermile 4.38) 80 feet upstream from centerline	*1103
			Private Drive (Rivermile 4.708) 25 feet downstream from centerline	*1123
			Private Drive (Rivermile 4.813) 20 feet downstream from centerline	*1130
		Peshastin Creek	Saunders Road (Rivermile 0.39) at centerline	*1011
			U.S. Routes 2 and 97 (Rivermile 0.66) 10 feet downstream from centerline.	*1034
			Private Drive (Rivermile 1.52) 50 feet downstream from centerline	*1095
			County Road 2997 (Rivermile 2.03) 75 feet upstream from centerline	*1132
			Driveway (Rivermile 4.05) 25 feet downstream from centerline	*1288
			U.S. Route 97 (Rivermile 5.19) 50 feet downstream from centerline	*1379
			U.S. Route 97 (Rivermile 5.19) 50 feet upstream from centerline	*1384
		Icicle Creek	East Leavenworth Road (Rivermile 2.485) 100 feet downstream from centerline.	*1120
			East Leavenworth Road (Rivermile 2.485) 300 feet upstream from centerline.	*1122
		Chumstick Creek	Burlington Northern Railroad (Rivermile 0.14) at centerline	*1108
			North Road (Rivermile 0.30) 100 feet upstream from centerline	*1119
			North Road (Rivermile 0.30) 160 feet upstream from centerline	*1124
			Mottler Road (Rivermile 0.49) 50 feet downstream from centerline	*1130
			Mottler Road (Rivermile 0.49) 100 feet upstream from centerline	*1135

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Mottler Road (Rivermile 0.59) at centerline	*1138
			Mottler Road (Rivermile 0.59) 100 feet upstream from centerline	*1141
			Driveway (Rivermile 0.82) 90 feet downstream from centerline	*1148
			Driveway (Rivermile 0.82) 300 feet upstream from centerline	*1152
			Driveway (Rivermile 1.22) at centerline	*1171
			Burlington Northern Railroad (Rivermile 1.85) 25 feet downstream from centerline.	*1208
			Burlington Northern Railroad (Rivermile 1.85) 100 feet upstream from centerline.	*1209
			Eagle Creek Road (Rivermile 2.225) 50 feet downstream from centerline.	*1227
			Eagle Creek Road (Rivermile 2.225) 75 feet upstream from centerline.	*1229
			Driveway (Rivermile 2.57) at centerline	*1246
			Driveway (Rivermile 2.69) 25 feet upstream from centerline	*1254
			Driveway (Rivermile 2.90) 100 feet downstream from centerline	*1262
			Driveway (Rivermile 2.90) 40 feet upstream from centerline	*1266
			Driveway (Rivermile 3.05) 30 feet downstream from centerline	*1270
			Driveway (Rivermile 3.05) 50 feet upstream from centerline	*1274
			State Route 209 (Rivermile 4.45) 120 feet downstream from centerline.	*1340
			State Route 209 (Rivermile 4.45) 300 feet upstream from centerline	*1343
			State Route 209 (Rivermile 4.97) 140 feet downstream from centerline.	*1364
			State Route 209 (Rivermile 4.97) 50 feet upstream from centerline	*1368
			Driveway (Rivermile 5.72) at centerline	*1404
			State Route 209 (Rivermile 5.78) at centerline	*1410
			Driveway (Rivermile 6.01) 50 feet upstream from centerline	*1418
			Driveway (Rivermile 6.05) 100 feet upstream from centerline	*1419
			Driveway (Rivermile 6.2) 75 feet upstream from centerline	*1427
			Sunitsch Canyon Road (Rivermile 6.58) 50 feet downstream from centerline.	*1447
			Sunitsch Canyon Road (Rivermile 6.58) 50 feet upstream from centerline.	*1452
			Driveway (Rivermile 6.82) 130 feet downstream from centerline	*1461
			Driveway (Rivermile 6.82) 75 feet upstream from centerline	*1465
			Irrigation Diversion (Rivermile 6.9) 40 feet downstream from centerline	*1471
			Irrigation Diversion (Rivermile 6.9) 45 feet upstream from centerline	*1473
			Burlington Northern Railroad (Rivermile 7.56) at centerline	*1521
			State Highway 209 (Rivermile 8.02) 25 feet downstream from centerline.	*1545
			Driveway (Rivermile 8.34) 110 feet downstream from centerline	*1561
			Driveway (Rivermile 8.34) 25 feet upstream from centerline	*1565
			State Route 209 (Rivermile 8.99) 25 feet downstream from centerline.	*1600
		Chiwawa River	County Road 22 (Rivermile 2.11) 115 feet upstream from centerline	*1927
		Entiat River	U.S. Route 97 (Rivermile 0.02) at centerline	*712
			Private Road (Rivermile 1.25) 30 feet upstream from centerline	*745
			Entiat River Road (Rivermile 2.88) 10 feet downstream from centerline.	*820
			Entiat River Road (Rivermile 4.07) 50 feet upstream from centerline	*888
			Private Road (Rivermile 5.38) 25 feet upstream from centerline	*957
			Fish Hatchery Road (Rivermile 5.92) 75 feet upstream from centerline	*992
			Hatchery Dam (Rivermile 6.77) at centerline	*1046
			Private Road (Rivermile 7.88) 50 feet upstream from centerline	*1104
			Private Road (Rivermile 8.75) 20 feet upstream from centerline	*1159
			Foot Bridge (Rivermile 9.64) 50 feet upstream from centerline	*1204
			Private Road (Rivermile 10.0) 25 feet downstream from centerline	*1220
			Mad River Road (Rivermile 10.67) at centerline	*1248
			Private Road (Rivermile 11.84) 50 feet upstream from centerline	*1303
			Private Road (Rivermile 12.06) at centerline	*1313
			Private Road (Rivermile 13.06) 50 feet downstream from centerline	*1366
			Private Road (Rivermile 13.66) at centerline	*1396
			Private Road (Rivermile 14.06) 30 feet downstream from centerline	*1417
			Private Road (Rivermile 18.65) 75 feet upstream from centerline	*1572
		Mad River	Lumber Mill Road (Rivermile 0.28) 10 feet upstream from centerline	*1265
			Private Road (Rivermile 0.57) 10 feet upstream from centerline	*1288
		Stehekin River	Bridge (Rivermile 3.62) 175 feet upstream from centerline	*1187
		Squilchuck Creek	Burlington Northern Railroad Yard (Rivermile 0.140) 30 feet downstream from centerline.	*637
			Burlington Northern Railroad (Rivermile 0.21) at centerline	*650
			Malaga Road (Rivermile 0.25) 10 feet upstream from centerline	*662
			Wenatchee Avenue (Rivermile 0.30) 110 feet upstream from centerline.	*682
			Squilchuck Road (Rivermile 3.825) 20 feet upstream from centerline	*1539
		Dry Gulch	Intersection of South Miller Street and Gehr Street	#2
			Intersection of South Miller Street and Circle Street	#2
			Intersection of Fuller Street and Gehr Street	#1
			Intersection of Okanogan Avenue and Crawford Street	#1
			Intersection of Mission Street and Crawford Street	#1
		Canyon Number One	Intersection of Surrey Road and Lester Road	#1
			Intersection of 5th Street and Woodward Drive	#1
			Intersection of South Western Avenue and 5th Street	#1
			Intersection of Springwater Street and Poplar Row	#1
			Intersection of Pershing Street and Maple Street	#1

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Canyon Number Two	Intersection of Wellington Place and Grandview Avenue	#2
			Intersection of South Western Avenue and Cherry Street	#2
			Intersection of Number Two Canyon Road and Grandview Avenue	#2
			Intersection of Castlerock Road and South Western Avenue	#1

Maps are available at: Planning Office, Courthouse Annex, 415 Washington Street, Wenatchee, Washington.

Send comments to: Mr. Tom Green, Chairman, Board of County Commissioners, Chelan County, Chelan County Courthouse, Wenatchee, Washington 98801.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19867; and delegation fo authority to Federal Insurance Administrator 44 FR 20963.)

Issued: October 31, 1979.

Gloria M. Jiminez,

Federal Insurance Administrator.

[FR Doc. 79-34634 Filed 11-8-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FI-2885]

Proposed Flood Elevation Determinations for Town of Lyndon, Caledonia County, Vt., Under the National Flood Insurance Program; Correction

AGENCY: Federal Insurance Administration, FIA.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 25441 of the Federal Register of May 17, 1977 and in *The Weekly News* on April 27, 1977 and May 4, 1977.

EFFECTIVE DATE: May 17, 1977.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, Room 5148, 451 Seventh Street, SW., Washington, D.C. 20410.

The following corrections are made:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Vermont	Lyndon (Town)	Passumpsic River	Canada Pacific Railroad Bridge	*689
			U.S. Route 5—75 feet upstream from centerline	*707
			Center Street	*708
			U.S. Route 5—100 feet downstream from centerline	*709
			Vermont Route 114—100 feet downstream from centerline	*711
			Canada Pacific Railroad Bridge	*716
			Vermont Route 114—25 feet downstream from centerline	*717
			Town Highway 36	*718
			Town Highway 40	*741
			Vermont Route 114	*752
		Calendar Brook	U.S. Route 5—475 feet upstream from centerline	*735
		Hawkins Brook	Town Highway 69—275 feet upstream from centerline	*687
			Town Highway 6—100 feet downstream from centerline	*706
		Millers Run	Interstate Highway 91	*714
			Town Highway 31	*718
		Wheelock Branch Brook	Town Highway 1	*708
			Cross Street—150 feet upstream from centerline	
			*709	

(National Flood Insurance Act of 1968 (Title of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority of Federal Insurance Administrator, 44 FR 20963)

Issued: October 31, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-34632 Filed 11-8-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5732]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below and proposed changes to base flood elevations for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSEES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 and Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a) (presently appearing at its former Title 24, Chapter X, § 1917.4(a)).

These elevations, together with the flood plain management measures required by § 60.3 (formerly § 1910.3) of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	*Elevation in feet (BGVD)
Illinois	Fox Lake, Village, Lake and McHenry Counties.	Squaw Creek	East side of Squaw Creek	*742
		Nippersink Lake	North of Benjamin Avenue	
			North of Channel Drive and Muriel Road	
		Grass Lake	North of Hilltop Avenue	*742
Maps available at: The Village Hall, 301 South Route 59, Fox Lake, Illinois.				
Send comments to: The Honorable Richard Hamm, Mayor of the Village of Fox Lake, 301 South Route 59, Fox Lake, Illinois 60020.				
Massachusetts	Fairhaven, Town, Bristol County	Acushnet River	Harbor Hurricane Barrier to N.W. Corporate Limits	*6
		Buzzards Bay	Harbor Hurricane Barrier to Rocky Point	*13
		Nasketucket Bay	Rocky Point to Eastern Corporate Limits	*13
The shorelines of Buzzards and Nasketucket Bays are subject to flood with velocity (wave action). See maps for areas affected by Zone V9 Designation.				
Maps available at: The Office of the Town Planner and the Board of Selectmen, 40 Center Street, Fairhaven, Massachusetts.				
Send comments to: Mr. Roland Seguin, Chairman, Board of Selectmen, Town Hall, 40 Center Street, Fairhaven, Massachusetts 02719				
Nebraska	Lincoln, City, Lancaster County	Oak Creek	2,000' upstream of West Mathis Street	*1,167
			3,100' upstream of West Mathis Street	*1,168
			5th Street (Extended)	*1,169
			3rd Street (Extended)	*1,170
			3,800' downstream of Burlington Northern Railroad	*1,171
			2,400' downstream of Burlington Northern Railroad	*1,172
Maps available at: Lincoln City-Lancaster County Planning Department, 555 South 10th Street, Lincoln, Nebraska.				
Send comments to: The Honorable Helen G. Boosalis, Mayor of the City of Lincoln, Attention: Mr. Douglas E. Brogden, Planning Director, 555 South 10th Street, Lincoln, Nebraska 68508.				
New Jersey	Point Pleasant, Borough, Ocean County.	Barnegat Bay	Shoreline	*8
		North Branch Beaver Dam Creek	Barnegat Bay to N. W. Corporate Limits	*8
		Point Pleasant Canal	Barnegat Bay to Manasquan River	*8
		Manasquan River	N. W. Corporate Limits to N. E. Corporate Limits	*8
Maps available at: Borough Hall, 2233 Bridge Avenue, Point Pleasant, New Jersey.				
Send comments to: The Honorable Peter A. Marone, Mayor of Point Pleasant, P.O. Box 25, 2233 Bridge Avenue, Point Pleasant, New Jersey 08742.				
Texas	Arlington, City, Tarrant County	Village Creek and Rush Creek	4,000' downstream of West Division Street	*495
			West Division Street Downstream	*497
		Village Creek	550' upstream of West Division Street	*498
			2,500' upstream of West Division Street	*500
		Johnson Creek	1,000' downstream of East Park Row	*580
			400' downstream of East Park Row	*582
			East Park Row Downstream	*584
			East Park Row Upstream	*587
			1,200' upstream of East Park Row	*589
Maps available at: City Hall, 200 West Abram, Arlington, Texas.				
Send comments to: The Honorable S. J. Stovall, Mayor of Arlington, Box 231, Arlington, Texas 76010.				
Texas	Galveston, City, Galveston County.	Gulf of Mexico	Shoreline south of 103rd Street (Extended)	*13
		Galveston Bay and West Bay	Shoreline	*12
Certain areas of the community are subject to flood with velocity (wave action). See maps for areas affected by Zone V11, V12 designations.				
Maps available at: The Office of the City Manager, 823 25th Street, Galveston, Texas.				
Send comments to: Mr. Thomas H. Muehlenbeck, City Manager, P.O. Box 779, Galveston, Texas 77553.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: October 29, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-34531 Filed 11-8-79; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FI-5058]

Revision of Proposed Flood Elevation Determinations for City of Worcester, Worcester County, Mass., Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Worcester, Worcester County, Massachusetts.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 6458 and in the *Worcester Telegraph and Gazette*, published on or about February 1, 1979, and February 8, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the City Clerk's Office, City Hall, 455 Main Street, Worcester, Massachusetts.

Send comments to: Honorable Thomas J. Early, Mayor, City of Worcester, City Hall, 455 Main Street, Worcester, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. R. Gregg Chappell, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5148, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Worcester, Massachusetts, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth and *elevation
Blackstone River	Boston and Maine Railroad Bridge 100 feet upstream from centerline.	*420
	Millbury Street Bridge 50 feet upstream from centerline.	*427
	2nd Bridge upstream of Conrail Crossing 50 feet upstream from centerline.	*442
Middle River	Millbury Street Bridge 50 feet upstream from centerline.	*445
	Southbridge Street Bridge 40 feet upstream from centerline.	*453
	St. Johns Cemetery Road Bridge 80 feet upstream from centerline.	*461
	Webster Street Bridge 30 feet upstream from centerline.	*476
Beaver Brook	Main Street Bridge 50 feet upstream from centerline.	*479
	Park Avenue Bridge 50 feet upstream from centerline.	*483
Kettle Brook (East)	Webster Street Bridge 50 feet upstream from centerline.	*477
Kettle Brook (West)	James Street Bridge 50 feet upstream from centerline.	*526
	Stafford Street 150 feet upstream from centerline.	*549
	Weir upstream of Building 30 feet upstream from centerline.	*672
Tatnuck Brook	Park Avenue Bridge 50 feet upstream from centerline.	*486
	June Street Bridge 30 feet upstream from centerline.	*526
	Pleasant Street Bridge 60 feet upstream from centerline.	*585
	Dawson Road Bridge 100 feet upstream from centerline.	*629
Curtis Ponds	Areas adjacent to shoreline	*476
Leesvile Pone	Areas adjacent to shoreline	*487
Indian Lake	Intersection of Sears Island Road and Doran Road.	*543
	Areas adjacent to shoreline	*543
Flagg Street Pond	Areas adjacent to shoreline	*543
Mill Brook Conduit (Ponding).	Intersection of Blackstone Street and Exchange Street.	*468
	Intersection of Commercial Street and Thomas Street.	*468
	Approximately 1,000 feet west of the intersection of New Bond Street and West Boylston Street.	*556
Weasel Brook (Ponding).	Area along Higgins Street approximately 2,800 feet north of the intersection of Higgins Street and Brooks Street.	*593
Mill Brook Conduit	Intersection of West Boylston Drive and Hull Place.	#2
	Intersection of North Street and Grove Street.	#2
Weasel Brook	Intersection of Greendale Avenue and West Boylston Street.	#2
	Intersection of Assumption Avenue and West Boylston Street.	#2

#Depth in feet above ground.
*Elevation in feet, national geodetic vertical datum.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: October 31, 1979.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 79-34633 Filed 11-8-79; 8:45 am]
BILLING CODE 6718-03-M

CIVIL AERONAUTICS BOARD

14 CFR Ch. I

Improving Government Regulations; Agenda of Significant Regulations

AGENCY: Civil Aeronautics Board.

ACTION: Publication of Agenda of Significant Rules under Development or Review.

SUMMARY: As part of its implementation of Executive Order 12044, *Improving Government Regulations*, the CAB publishes its first semiannual Agenda of Significant Rules under Development or Review.

DATES: Adopted: November 1, 1979.

ADDRESSES: Copies of the rulemaking documents listed in this agenda can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428; (202) 673-5432. Each document should be identified by the designation appearing in parenthesis after the Federal Register citation.

Persons wishing to be placed on a mailing list for future editions of this agenda should send a postcard request to the Distribution Section at the above address.

FOR FURTHER INFORMATION CONTACT: About a specific rulemaking action listed in this agenda—the contact person listed below. About this agenda—Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: In PS-88, also adopted today, the Board announced its final plan for voluntarily implementing Executive Order 12044, *Improving Government Regulations.* Publication of this Agenda of Significant Rules under Development or Review is one part of the plan.

This agenda is divided into two categories: Rules under Development, and Existing Rules under Review. An

action to amend an existing part of the Code of Federal Regulations is, however, listed as a rule under development unless it involves a reexamination of the basic policy and purpose of that part. The second category includes those regulations that were listed as subjects for review when the Board published its request for comments on implementing the Executive Order (43 FR 29251; July 6, 1978), with updated status descriptions.

For each rulemaking action listed in the agenda, the following information is set out: title; the name, office abbreviation, and telephone number of a knowledgeable Board official to contact for further information; status of the action; and description. Addresses for all contact persons are Civil Aeronautics Board, Washington, D.C. 20428. Unless otherwise noted, the legal authority for a rulemaking action is the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978.

The Board plans to prepare a formal regulatory analysis on item #10, *Scheduled-service air transportation sold by contract,* and retains the discretion to direct that such a document be prepared for any other rulemaking included on this agenda.

Statements in the status column that a notice or advance notice of proposed rulemaking is in preparation indicate that the staff is preparing a draft for Board action. They do not imply that the proposal will necessarily be issued, that the Board has endorsed the substance of the proposal, or that the petition (if any) prompting the rulemaking activity will necessarily be granted.

Although this agenda is intended to list all significant Board regulations that are under development or review, it is not a complete guide to all significant rulemaking activity for the 6 months until publication of the next agenda. First, new rulemaking actions may arise and be completed between now and then. Second, we may have inadvertently omitted one or more items. Any such omission shall not preclude the Board from taking action on the item, and shall not be a ground for judicial review of the rule.

Abbreviations Used in This Agenda

"Act" means the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1301 *et. seq.*, including amendments made by the Deregulation Act.

"Deregulation Act" means the Airline Deregulation Act of 1978, Pub. L. 95-504, 92 Stat. 1705.

"CFR" means Code of Federal Register.

"FR" means Federal Register.

"ANPRM" means advance notice of proposed rulemaking.

"NPRM" means notice of proposed rulemaking.

Office abbreviations:

BCP—Bureau of Consumer Protection.

BDA—Bureau of Domestic Aviation.

BIA—Bureau of International Aviation.

OEA—Office of Economic Analysis.

OGC—Office of the General Counsel.

ER-, EDR-, SPR-, SPDR-, and similar designations appearing in parenthesis after a Federal Register citation are the Board's internal designations for final rules and proposed rules. Using these designations, interested persons can obtain copies of documents from the Distribution Section at the address listed above. The Distribution Section will also establish and maintain a list of persons wishing to receive copies of future agendas.

Accordingly, the Civil Aeronautics Board published the attached Agenda of Significant Regulations under Development or Review.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

Rules Under Development

Contact person	Status	Description
I. Small Community Air Service Program		
1. Notice procedures for terminations and reductions of service (14 CFR Part 323).		
Mark Frisbie, OGC, 202-673-5442	Interim rule, 44 FR 20635, April 6, 1979 (PR-200). Request for comments on interim rule, 44 FR 20717, April 6, 1979 (PDR-65, Docket 35197). Comment period closed June 8, 1979.	These notice procedures for airlines that are discontinuing or reducing passenger service help the Board guarantee essential air service to small communities as required by section 419 of the Act, added by the Deregulation Act, and they give the public advance warning of significant cutbacks in service.
2. Procedures for compensating air carriers for losses (14 CFR Part 324).		
David Schaffer, OGC, 202-673-5442	Interim rule, 44 FR 42171, July 19, 1979 (PR-209). Request for comments on interim rule, 44 FR 42171, July 19, 1979 (PDR-67, Docket 36128). Comment period closed September 17, 1979.	The Board can order an airline to continue to provide essential air service to a community while the agency tries to find a replacement airline, but it must compensate the incumbent airline for any financial losses incurred in complying with the order. This rule governs proceedings for determining the compensation for the incumbent airline's losses.
3. Determining the number of seats needed to provide essential air service (14 CFR Part 398).		
Patrick V. Murphy, BDA, 202-673-5408	Rulemaking in preparation	Under guidelines for determining the level of essential air service for small communities, the Board first determines the number of passengers that will need to be accommodated. It then determines the number of available seats it needs to guarantee, on the assumption that the average load factor (percentage of seats filled) will be 60 to 65 percent. That figure is based on normal load factors with large aircraft. This amendment would lower that figure, to reflect the fact that with smaller aircraft a lower load factor is needed to ensure the same likelihood that no passengers will be denied a seat.

Rules Under Development—Continued

Contact person	Status	Description
4. Essential air service subsidy guidelines.		
John R. Hokanson, BDA, 202-673-5368	NPRM in preparation	The Board provides subsidy to airlines to ensure that small communities receive essential air service at a level determined in accordance with 14 CFR Part 398 (see entry Nos. 2 and 3 in this agenda). This rule would implement section 419(d) of the Act, which directs the Board to establish guidelines for computing the fair and reasonable amount of compensation necessary to guarantee that level of service.
5. Criteria for designating additional points eligible for subsidy.		
David Schaffer, OGC, 202-673-5442	NPRM, 44 FR 59242, October 15, 1979 (EDR-390, Docket 36816). Comments are due November 14, 1979.	The Board's small community air service program guarantees essential air service, with subsidy if necessary, to "eligible points". The initial set of eligible points is established in section 419(a) of the Act. This rule would implement section 419(b), which directs the Board to establish objective criteria for designating additional eligible points.
II. Fares and Tariffs		
6. Price advertising of air transportation.		
David Schaffer, OGC, 202-673-5442	ANPRM, 42 FR 30376, June 14, 1977 (EDR-328/SPDR-58/PSDR-48, Docket 30667). Comment period closed August 25, 1977. Reply comment period closed September 15, 1977.	The Board is examining whether there is a need for specific rules to prevent deception in the advertising of air fares.
7. Policy statement on price discrimination.		
Mark S. Kahan, BDA, 202-673-5830	NPRM, 44 FR 21816, April 12, 1979 (PSDR-58, Docket 35253). Comment period closed August 29, 1979.	Airlines are now generally free to establish domestic passenger fares within broad zones without Board interference. However, they remain subject to the prohibitions in section 404(b) of the Federal Aviation Act against unjust discriminaiton and undue or unreasonable prejudice or preference in pricing. These prohibitions expire on January 1, 1983, along with the rest of the Board's jurisdiction over domestic passenger fares. This policy statement would modify and clarify the Board's interpretation of those prohibitions.
8. Advance notice of tariff filings (14 CFR Parts 221 and 399).		
Norman D. Schwartz, BDA, 202-673-5056	NPRM, 44 FR 44549, July 30, 1979 (EDR-386/PSDR-62, Docket 36202). Comment period closed August 29, 1979.	This rule would relax the Board's requirements for advance notice of proposed tariff changes to permit airlines to more quickly implement rate and fare changes, particularly rate and fare reductions. The changes are intended to remove unnecessary regulatory obstacles to a more competitive and dynamic pricing system.
9. International passenger fare standards.		
Mark S. Kahan, BDA, 202-673-5830	NPRM in preparation	Within a broad zone that is based on a standard industry fare level, airlines are currently free to establish their domestic passenger fares at whatever level their business judgment dictates. The Board is considering establishing a similar system for international passenger fares.
10. Scheduled-service air transportation sold by contract.		
Albert Halprin, OGC, 202-673-5205	ANPRM in preparation	This rule would give airlines an exemption to sell air transportation in domestic scheduled service by contract without filing or adhering to a filed tariff. The general purpose of the rule would be to encourage fare competition and assist in the transition to a deregulated environment.
11. Plain English for airline/passenger contracts.		
Patricia J. Kennedy, BCP, 202-673-5158	ANPRM in preparation	Contracts between airlines and their passengers are governed by tariffs, which are filed with the Board and available for inspecton at airline ticket offices. Although tariffs are complicated and relatively inaccessible documents, passengers are presumed to have read them and consented to their terms and conditions. Over the past several years, many businesses have developed "plain English" contracts so that customers clearly understand what they are agreeing to. The Board is examining how this approach might be applied to airline/passenger contracts, and whether the presumptive notice concept should be permitted for exculpatory rules.
12. Elimination of mandatory joint fares.		
Michael B. Fingerhut, BDA, 202-673-6064; or Albert Halprin, OGC, 202-673-5205.	NPRM in preparation	The mandatory joint fare requirements established in the *Domestic Passenger Fare Investigation* will end by January 1, 1983, with the end of the Board's jurisdiction over domestic passenger fares. The Board is considering whether to eliminate the mandatory joint fare program sooner or to phase it out
13. Involuntary refunds.		
Patricia Kennedy, BCP, 202-673-5158	NPRM in preparation	Airlines now charge passengers for the transportation actually used, even when the flight does not reach the ticketed destination. This rule would require airlintes to give passengers who are stranded by a schedule irregularity the option of returing to their point of origin on the first available flight and receiving a refund.
14. Refunds of unused tickets.		
Glenn W. Wienhoff, BCP, 202-673-5482	NPRM in preparation	This rule would establish deadlines for carriers to make refunds to consumers for unused tickets.
III. Charters		
15. Charter flight delays.		
Mark Schwimmer, OGC, 202-673-5442	NPRM, 42 FR 64905, December 29, 1977 (EDR-343, Docket 31229). Comment period closed April 14, 1978. Reply comment period closed May 15, 1978.	This rule would tighten the existing rules on flight delays by U.S. charter airline and extend those rules to passenger charter flights of all types of direct air carriers, other than air taxi operators.

Rules Under Development —Continued

Contact person	Status	Description
16. Removal of limitations on cargo charters (14 CFR Parts 207, 208, 212, 214).		
Mark Frisbie, OGC, 202-673-5442	NPRM, 44 FR 50607, August 29, 1979 (EDR-351B/SPRD-73, Docket 31788). Comment period closed October 29, 1979.	This rule would allow cargo to be carried on the main deck of the aircraft on split passenger/cargo charters, would eliminate for cargo charters the requirement that the entire aircraft be engaged in the aggregate, and would allow part charters of cargo on scheduled cargo or combiantion flights. It would also require passenger charter operators to state in their contracts with individual participants, in boldface type, the baggage allowance and charges for each passenger.
17. Minimum contract size and notice provisions for pro rata and single-entity charters (14 CFR Parts 207, 208, 212, 214).		
Mark Frisbie, OGC, 202-673-5442	NPRM, 44 FR 36065, June 20, 1979 (EDR-382, Docket 34533). Comment period closed August 20, 1979.	This rule would reduce from 40 persons to 20 the minimum contract size for pro rata, or "affinity," charters and for single-entity charters. It would also require a notice in all solicitation materials for pro rata charters, to warn participants of the lack of consumer protection provisions.
18. Review of foreign air carrier charter authority (14 CFR Parts 212, 214).		
Mark Frisbie, OGC, 202-673-5442	Petition filed in Docket 35046. NPRM in preparation	The National Air Carrier Association has petitioned the Board to revise the charter authority of foreign air carriers to conform to the provisions of current bilateral air service agreements, and, where there is no applicable bilateral provision, to restrict certain authority of those carriers whose homelands do not accord reciprocal treatment to U.S. carriers.
19. Escrow accounting for public charters (14 CFR Part 380).		
Mark Frisbie, OGC, 202-673-5442	NPRM, 44 FR 32399, June 6, 1979 (SPDR-69, Docket 35705). Comment period closed August 6, 1979.	This rule would amend the escrow system for the protection of Public Charter passengers' funds, to simplify the accounting procedures and to eliminate a limitation on disbursements by the escrow bank.
20. Elimination of off-route charter restrictions (14 CFR Part 207).		
David Schaffer, OGC, 202-673-5442	NPRM 44 FR 41828, July 18, 1979 (EDR-383, Docket 36113). Comment period closed September 17, 1979.	This rule would continue the Board's liberalization of its charter rules by lifting the remaining restrictions on off-route charters by U.S. Airlines.
21. Part charters (14 CFR Parts 207, 208, 212, 124).		
Mark Schwimmer, OGC, 202-673-5442	NPRM in preparation	Current rules prohibit airlines from providing charter and scheduled service on the same aircraft. This rule would permit such combinations
22. Registration of foreign charter operators.		
David Schaffer, OGC, 202-673-5442	NPRM in preparation	This rule would replace the requirement that foreign charter operators obtain a foreign air carrier permit under section 402 of the Federal Aviation Act with a simple registration requirement, to ease market entry and promote competition.
23. Charter consumer protection against major changes (14 CFR Part 380).		
Mark Schwimmer, OGC, 202-673-5442	NPRM in preparation	The Board's current rules establish a cancel-with-refund remedy scheme for charter participants who are confronted with "major changes" in the tour packages that they have purchased. This rule would clarify that scheme so that it cannot be misinterpreted as excusing changes that are so substantial as to amount to non-performance by the charter operator.
24. Charter price flexibility (14 CFR Part 380).		
Mark Schwimmer, OGC, 202-673-5442	NPRM in preparation	The Board's current rules allow charter operators, in their contracts with participants, to reserve the right to increase the charter price up to 10%, as long as the increase occurs 10 or more days before departure. The Board is considering whether to eliminate this flexibility, to retain it as is, to retain it but require increases to be cost-justified, or to increase the flexibility.
25. Cooling-off period for charter participants who have experienced major changes (14 CFR Part 380).		
Mark Schwimmer, OGC, 202-673-5442	NPRM in preparation	When a charter operator offers a refund to a participant who rejects a major change in a tour package, the operator is allowed to condition the refund on the participant's agreeing to waive any other claims he or she may have against the operator as a result of the change. This rule would establish a cooling-off period that would allow participants to reconsider their acceptance of the refund and accompanying waiver, in order to pursue other remedies.
26. Advertising and sale of Super Bowl charter trips		
Bill Rosen, BCP, 202-673-5939	NPRM in preparation	The Board is reviewing whether more detailed regulations are needed for the protection of consumers purchasing charter tour packages for the Super Bowl, including the availability of game tickets.
IV. Miscellaneous		
27. Nondiscrimiantion on the basis of handicap.		
Mary Candace Fowler, BCP, 202-673-5158	NPRM, 44 FR 32401, June 6, 1979 (SPDR-70, Docket 34030). Comment period closed September 4, 1979. Reply comment period closed September 24, 1979.	This rule would prohibit unlawful discrimination against handicapped air travelers and implement section 504 of the Rehabilitation Act of 1973.
28. Consumer protections for members of scheduled-service tour groups.		
David Schaffer, OGC, 202-673-5442	ANPRM, 44 FR 43481, July 25, 1979 (SPDR-71, Docket 34997). Comment period closed October 23, 1979. Reply comments are due November 22, 1979.	The Board has invited comments on whether consumer protection rules are needed for scheduled-service tours, on the Board's statutory authority to prescribe such rules, and on the form that those rules might take.
29. Extensions of credit by airlines to political candidates (14 CFR Part 374a).		
Richard B. Dyson, OGC, 202-673-5442	NPRM, 44 FR 49464, August 23, 1979 (SPDR-72, Docket 35042). Comment period closed October 22, 1979. Reply comments are due November 13, 1979.	This rule would extend the time within which a political candidate must pay an airline's monthly bills from 14 to 25 days, to bring that payment period into line with the period that airlines normally use in dealing with the public. It would amend 14 CFR Part 374a, which implements section 401 of the Federal Election Campaign Act of 1971.

Rules Under Development —Continued

Contact person	Status	Description
30. Liberalized regulation of foreign indirect cargo carriers (14 CFR Part 297).		
Joseph Di Bella, BIA, 202-673-5035	NPRM, 44 FR 30694, May 29, 1979 (EDR-378/ODR-18, Docket 35568). Comment period closed July 6, 1979. Reply comment period closed July 23, 1979.	This rule would replace the requirement that foreign indirect cargo carriers obtain a foreign air carrier permit under section 402 of the Federal Aviation Act with a simple registration requirement. The rule would give foreign air freight forwarders competitive opportunities equal to those of U.S. air freight forwarders, which the Board recently deregulated.
31. Air carrier fitness.		
Paul Gretch, BDA; 202-673-5373	NPRM, 44 FR 44106, July 26, 1979 (EDR-385, Docket 36176). Comment period closed October 15, 1979. Reply comments are due November 5, 1979.	This rule would describe the information that must be filed with the Board by applicants for passenger route authority and commuter air carriers serving points eligible for subsidy, so that the Board can determine their fitness. "Fit" means fit, willing, and able to perform the air transportation in question properly and to conform with the Federal Aviation Act and Board requirements issued under the Act.
32. Zones for mail rates.		
Mark S. Kahan, BDA; 202-673-5830; or Lawrence Myers, OGC; 202-673-5791.	NPRM, 44 FR 52246, September 7, 1979 (EDR-387/PDR-68, Docket 36497). Comments are due November 5, 1979. 1979. Reply comments are due November 20, 1979.	This rule would end the Board's current practice of prescribing fixed rates for the transportation of mail by air, and in its place establish zones for each category of mail. Each zone would be defined by maximum and minimum rates prescribed by the Board, and airlines would be free to contract with the Postal Service for the carriage of mail at any price within the zone.
33. Reporting of air cargo traffic (14 CFR Parts 291, 296).		
Joseph A. Brooks, OGC; 202-673-5442	Petition filed in Docket 36544. NPRM in preparation	The Air Freight Forwarders Association has petitioned the Board to increase requirements that airlines and freight forwarders file reports of their cargo traffic, to monitor the effects of air cargo deregulation.
34. Age discrimination.		
David Schaffer, OGC; 202-673-5442	NPRM, 44 FR 55383, September 26, 1979 (SPDR-74, Docket 36639). Comments are due November 26, 1979.	This rule would prohibit discrimination against air travelers on the basis of age and implement the Age Discrimination Act of 1975.
35. Policy statement on preemption (14 CFR Part 399).		
Michael Schopf, OGC; 202-673-5436	Interim rule, 44 FR 9948, February 15, 1979 (PS-83). Request for comments on interim rule, 44 FR 9953, February 15, 1979 (PSDR-56, Docket 34684). Comment period closed April 16, 1979.	This rule sets out interim Board policies for regulation of intrastate routes of airlines that have interstate authority. The Board has concluded that under section 105 of the Act it, not the States, is responsible for economic regulation (or deregulation, as the case may be) of all the routes, rates, or services of any airline holding either (i) a certificate of public convenience and necessity to provide interstate air transportation, or (ii) an exemption under section 416 of the Act from the requirement for such a certificate.
36. Insurance for air carriers.		
Patricia Szrom, BDA; 202-673-5088; or Richard Loughlin, BIA; 202-673-5880.	NPRM in preparation	This rule would establish liability insurance requirements for all U.S. and foreign direct air carriers, to protect the public against losses caused by those carriers. The rule would implement section 401(q)(1) of the Act, as added by the Deregulation Act.
37. Dual authority (14 CFR Part 298).		
Mark Schwimmer, OGC; 202-673-5442	NPRM in preparation	Airlines that use only small aircraft are already exempt from many regulatory requirements of the Act. This rule would grant similar exemptions to certificated airlines (which usually operate large aircraft) for their small aircraft operations, in order to promote competition.
38. Liberalized regulation of wet lease agreements (14 CFR Parts 207, 208, 212, 214, 289, 399).		
Mark Schwimmer, OGC; 202-673-5442	NPRM in preparation	This rule would liberalize the restrictions on wet leases (leases of aircraft with crew) between airlines, to eliminate unnecessary barriers to competition.
39. Mandatory participation in Passenger Origin-Destination Survey (14 CFR Part 241).		
Clifford M. Rand, OEA; 202-673-6044	NPRM in preparation	Most scheduled-service airlines now participate in this survey on a voluntary basis. This rule would make such participation mandatory, to ensure the availability of information that is essential for the Board's report to Congress on the effects of airline deregulation.
40. Employee protection program.		
Michael Schopf, OGC; 202-673-5436	NPRM in preparation	Section 43 of the Airline Deregulation Act of 1978 established an employee protection program. Protected employees may receive monthly assistance payments from the Secretary of Labor if the Board determines that a qualifying dislocation of an airline has taken place. This rule would set forth procedures for those Board determinations.
41. Airline responsibility for schedule changes and irregularities.		
Mary Candace Fowler, BCP; 202-673-5158	ANPRM in preparation*	As airlines have been exercising greater freedom to enter and leave markets, the Board has begun to examine what, if any, obligations airlines should have to rebook affected passengers, protect their discount fares, and provide prompt notice of schedule changes. The Board will also consider what consumer protections should apply to situations like strikes and aircraft groundings.
42. Advertising of flights as "direct".		
Brinley H. Williams, BCP; 202-673-5937	NPRM in preparation	This rule would prohibit airlines from advertising flights as "direct" when there is a change of aircraft.

EXISTING RULES UNDER REVIEW

Contact person	Status	Description
43. Rules governing performance of charter flights by different types of direct air carriers (14 CFR Parts 207, 208, 212, 214).		
Mark Schwimmer, OGC, 202-673-5442	NPRM in preparation	These rules, which are largely duplicative would be consolidated and simplified.
44. Ticket notices and ticket office counter signs (14 CFR Parts 221, 250, 298).		
Eleanor Minsky, BCP, 202-673-6060	NPRM in preparation	Board rules require various types of notices to be included in tickets, displayed on signs in ticket offices or both. These notices contain important consumer information about fares, overbooking, baggage liability, and liability for death or injury. The Board is reviewing these requirements to evaluate their effectiveness, with a view towards simplifying them.

EXISTING RULES UNDER REVIEW—Continued

Contact person	Status	Description
45. Airline credit/interest rates (14 CFR 221.38).		
Mary Candace Fowler, 202-673-5158	NPRM in preparation	Current rules enable airlines to charge interest in excess of state usury laws for air transportation that is paid for with airline-issued credit cards. This rule would make airlines subject to usury laws in the card holder's home state.
46. Liability limits for lost, delayed, and damaged baggage (14 CFR Part 221).		
Mary Candace Fowler, BCP, 202-673-5158	NPRM in preparation	The Board is reviewing the current baggage liability limits. This rule would adjust those limits to reflect changes in the cost of living index.
47. Fare summaries (14 CFR Part 221a).		
David Schaffer, OGC, 202-673-5442	Petition filed in Docket 35139. Petition granted, 44 FR 57085, October 4, 1979 (Order 78-8-116).	This rule requires certificated scheduled airlines to provide concise information to the public about the various fares they offer in domestic air transportation. It is designed to provide enough information to enable consumers to make an informed choice of fare plan. Fare summaries do not seem to have received a great deal of attention from passengers, however. In response to a petition from American Airlines, the Board is reviewing this rule to decide how it might be improved, or whether it should be abolished and some other fare information requirement should be imposed. The Board has also waived the effectiveness of the rule, pending the review.
48. Barter and free or reduced-rate transportation for promotional purposes (14 CFR Part 223).		
Mark S. Kahan, BDA, 202-673-5830; or Michael Schopf, OGC, 202-673-5436.	NPRM, 44 FR, November 7, 1979 (EDR-391, Docket 35392). Comments are due January 7, 1979.	This rule would allow airlines to provide free or reduced rate travel in exchange for goods and services or to persons involved in promoting air transportation.
49. On-time arrival standards (14 CFR Part 234).		
Joseph A. Brooks, OGC, 202-673-5442	Petition filed in Docket 27891. NPRM in preparation	The Aviation Consumer Action Project has petitioned the Board to restate its on-time arrival standards in terms of actual-versus-scheduled *arrival* times, instead of actual-versus-scheduled *elapsed* times.
50. Air carrier accounting and reporting requirements (14 CFR Part 241).		
Clifford M. Rand, OEA, 202-673-6044	Petition filed in Docket 34015. NPRM in preparation	The Board is conducting a major review of its largest reporting system to reflect the changing character of certificated air carrier operations since enactment of the Airline Deregulation Act of 1978. It expects to eliminate a significant number of financial and statistical report schedules now filed by certificated carriers. The Board is also considering alternatives to current monthly financial reporting requirements, in response to a petition filed by the Air Transport Association of America.
51. Revision of record-retention requirements (14 CFR Part 249).		
Clifford M. Rand, OEA, 202-673-6044	NPRM, 43 FR 50150, October 26, 1978 (EDR-365, Docket 33725). Comment period closed January 26, 1979.	This would be the first major revision of the Board's record-retention requirements for airlines since 1957. It is designed to make them less burdensome and easier to understand and administer.
52. Denied boarding compensation (14 CFR Part 250).		
Joseph A. Brooks, OGC, 202-673-5442	Petition filed in Docket 36294. NPRM in preparation	Airlines are required to pay denied boarding compensation to passengers who are bumped from their flights. The Aviation Consumer Action Project has petitioned for a clarification of the applicability of that requirement to extra sections of flights. This rule would respond to the petition and clarify or eliminate some exceptions to the denied boarding compensation requirement.
53. Smoking on airplanes (14 CFR Part 252).		
Richard B. Dyson, OGC, 202-673-5442	Final rule, 44 FR 5071, January 25, 1979 (ER-1091). NPRM, 44 FR 29486, May 21, 1979 (EDR-377, Docket 29044). Editorial correction of NPRM, 44 FR 33410, June 11, 1979 (EDR-377A). Comment period closed August 20, 1979. Reply comment period closed September 19, 1979.	In January, 1979, the Board amended its rules on smoking aboard aircraft to provide passengers more effective protection from tobacco smoke. The new requirements include special segregation of cigar and pipe smokers, a minimum of two rows of seats in the no-smoking area for each class of service, and enough seats in no-smoking areas for all persons who wish to be seated there, with provision for expansion of those areas to meet passenger demand. In May, 1979, the Board proposed further changes, including special seating for susceptible passengers, buffer zones, and special locations for cigar and pipe smoking. Other options include a ban on cigar and pipe smoking, and prohibitions based on the type of aircraft (for example, banning smoking on planes with 30 or fewer seats) or length of flight (for example, banning smoking on all flights of less than 1 hour).
54. Elimination of commission-filing requirement (14 CFR Parts 253, 399.85)		
David Schaffer, OGC, 202-673-5442	NPRM, 44 28670, May 16, 1979 (EDR-376/PSDR-60, Docket 35514). Comment period closed July 16, 1979.	This rule would eliminate the requirement that airlines file with the Board schedules of the commissions that they pay travel agents. The usefulness of those filings does not appear to be justified by their cost, and the requirement may tend to dampen competition.
55. Rules of Practice in Enforcement Proceedings (14 CFR Part 302).		
Howard M. Schmeltzer, BCP, 202-673-5937	NPRM in preparation	This rule would simplify and clarify Board procedures, and expedite the resolution of formal enforcement proceedings.
56. Nonpublic Investigation by the Bureau of Consumer Protection (14 CFR Part 305).		
J. Craig Weller, BCP, 202-673-5939	NPRM in preparation	This rule would clarify and simplify the procedures for conducting nonpublic investigations.
57. Implementation of the National Environmental Policy Act (14 CFR Part 312).		
Steven Rothenberg, BDA, or Laurence J. Aurbach, BDA, 202-673-5858; or Arnold G. Konheim, OEA, 202-673-6089.	ANPRM, 43 FR 38025, August 25, 1978 (PDR-56, Docket 32602). NPRM, 44 FR 45637, August 3, 1979 (PDR-56A). Comment period closed October 2, 1979. Reply comment period closed October 22, 1979.	This rule would revise the Board's environmental regulation to adjust for (a) the Board's new policies under deregulation, (b) experience gained since the rule was first adopted, and (c) the Council on Environmental Quality's new regulations.
58. Protection of charter participants' funds (14 CFR Parts 371, 372a, 373, 378, 378a, and others).		
Mark Schwimmer, OGC, 202-673-5442	NPRM, 42 FR 61408, December 2, 1977 (SPDR-63, Docket 31735). Comment period closed June 30, 1978. Reply comment period closed July 31, 1978.	The Board has been reviewing the patchwork of redundant, and sometimes inconsistent, regulations for the protection of charter participants' funds, with a view towards establishing a simpler, uniform set of requirements. The redundancies and inconsistencies were largely eliminated when five different charter regulations were replaced by the Public Charter rule, 14 CFR Part 380, discussed in #59 below.
59. Liberalized conditions under which charter flights may be sold by indirect air carriers (14 CFR Part 380).		

EXISTING RULES UNDER REVIEW—Continued

Contact person	Status	Description
Mark Schwimmer, OGC, 202-673-5442	Final rule adopting 14 CFR Part 380, *Public Charters*, 43 FR 36604, August 18, 1978 (SPR-149). Final rules revoking 14 CFR Parts 371, 372a, 373, 378, and 378a, 43 FR 36603-4, August 18, 1978 (SPR-150 through SPR-154).	The Board eliminated most restrictions on the sale of charters by indirect air carriers, by adopting the Public Charter rule in August, 1978. There are no longer any Board-imposed advance purchase, minimum stay, ground package, or round-trip requirements. The Public Charter rule replaced five other regulations: Advanced Booking Charters, Inclusive Tour Charters, One-stop-inclusive Tour Charters, Travel Group Charters, and Study Group Charters. Those rules have been revoked.
60. Domestic passenger fare standards (14 CFR Part 399, Subpart C).		
Norman D. Schwartz, BDA, 202-673-5056, except on Alaska contact: Robert S. Goldner, OGC, 202-673-5205.	Final rule, 43 FR 39522, September 5, 1978 (PS-80). NPRM on general policy, 44 FR 30108, May 24, 1979 (PSDR-61, Dockets 31290, 27417). Comment period closed June 25, 1979. NPRM on Puerto Rico/Virgin Islands, 43 FR 51641, November 6, 1978 (EDR-366/PDR-58/PSDR-52, Docket 33836). Comment period closed December 18, 1978. Reply comment period closed January 2, 1979. NPRM on Hawaii, 44 FR 18688, March 29, 1979 (EDR-373/PDR-64/PSDR-57, Docket 35119). Revised NPRM on Hawaii, 44 FR 28826, May 17, 1979 (EDR-373/PDR-64A/PSDR-57A). Comment period closed May 29, 1979. Reply comment period closed June 19, 1979. NPRM on Alaska, 44 FR 52847, September 11, 1979 (EDR-388/PSDR-63, Docket 29198). Comments are due November 13, 1979. Reply comments are due November 28, 1979.	In Summer, 1978, after a review of the entire body of pricing standards developed in the *Domestic Passenger Fare Investigation*, the Board ended its practice of prescribing normal fares in the continental United States. Airlines were instead allowed the flexibility to set fares within a specific zone without fear of suspension by the Board. The Airline Deregulation Act of 1978 confirmed this policy by establishing a "zone of reasonableness" within which the Board could not fine any domestic fare unlawful. While the Board's "no suspend" zone and the statutory zone of reasonableness are similar, there are technical differences and the Board's zone is in some respects broader. The Board has therefore proposed (1) to amend its general policy statement on fare flexibility to reflect the Deregulation Act, and (2) to extend its broader zones from continental U.S. markets to include Puerto Rico, Virgin Islands, Hawaii, and Alaska markets.

[FR Doc. 79-34819 Filed 11-8-79; 8:45 am]
BILLING CODE 6320-01-M

Notices

Federal Register
Vol. 44, No. 219
Friday, November 9, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest Grazing Advisory Board; Meeting

The Bridger-Teton National Forest Grazing Advisory Board will meet 1:00 p.m., December 17, 1979, in the Conference Room of the Sublette County Library, Pinedale, Wyoming. The purpose of this meeting is to discuss utilization of range betterment funds and the development of allotment management plans.

The meeting will be open to the public. Persons who wish to attend should notify Forest Supervisor Reid Jackson, Box 1888, Jackson, Wyoming 83001, telephone (307) 733-2752. Written statements may be filed with the board before or after the meeting.

The board has established the following rules for public participation:

1. If a group wishes to be heard at the meeting, they are required to select a chairman to voice their ideas.
2. Persons or groups may send written statements to the Forest Supervisor for presentation at the meeting.
3. The Chairman of the Forest Grazing Advisory Board will set aside a time period on the agenda for public comment.

November 1, 1979.

Reid Jackson,

Forest Supervisor.

[FR Doc. 79-34808 Filed 11-8-79; 8:45 am]

BILLING CODE 3410-11-M

Targhee Forest Grazing Advisory Board; Meeting

November 1, 1979.

The Targhee National Forest Grazing Advisory Board meeting will be held November 30, 1979, 1:30 p.m., at the Supervisor's Office, Targhee National Forest, 420 North Bridge Street, St. Anthony, Idaho.

The purpose of the meeting will be for the Board to make recommendations to the Forest Supervisor on range allotment planning and the use of range betterment funds scheduled for fiscal year 1980.

In accordance with the Federal Advisory Committee Act (P.L. 92-463), this meeting is open to the public. Forest Supervisor David Jay requests that comments from non-board members be withheld until the conclusion of the business meeting.

For additional information, contact Bill Little at the Targhee National Forest Supervisor's Office or telephone 208-624-3151.

David M. Jay,

Forest Supervisor.

[FR Doc. 79-34806 Filed 11-8-79; 8:45 am]

BILLING CODE 3410-11-M

Federal Grain Inspection Service

Elimination of the Official Test for Dark, Hard and Vitreous Kernels in Hard Red Winter Wheat Under the U.S. Grain Standards Act

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Final notice.

SUMMARY: This rule eliminates the official test for Dark, Hard, and Vitreous (DHV) kernels in Hard Red Winter (HRW) wheat under the U.S. Grain Standards Act. The elimination of the DHV test will minimize interlaboratory differences in testing and intermarketing differences in marketing HRW wheat.

EFFECTIVE DATE: December 10, 1979, except that the test for DHV kernels in HRW wheat shall be available upon request of an applicant until May 1, 1980, for contracts that specify a DHV level and are outstanding as of November 9, 1979.

FOR FURTHER INFORMATION CONTACT: Leslie E. Malone, Assistant Deputy Administrator, Program Operations (Staff), Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250, (202) 447-9166.

SUPPLEMENTARY INFORMATION: On May 1, 1977, under the provisions of section 4 of the U.S. Grain Standards Act (7 U.S.C. 76), hereinafter cited as the Act, all references to subclass in HRW wheat were deleted from the Official United States Standards for Wheat. The subclasses in HRW wheat were based on specified levels of DHV kernels. The deletion of the subclasses was based on studies indicating that in measuring the baking quality of wheat, protein content is a more accurate measure than the DHV kernel content. Further, protein content is determined on a completely objective basis, whereas, the DHV kernel content is determined by a largely subjective test. The subjectiveness of the DHV test has contributed to interlaboratory differences in test results and intermarket differences in marketing HRW wheat. To lessen the negative impact of deleting the subclasses of HRW wheat, upon request of an applicant, official inspection personnel were authorized to test HRW wheat for DHV content under the permissive criteria provisions of section 7(b) of the Act (7 U.S.C. 79(b)).

When the subclasses in HRW wheat were deleted, the DHV test was the only official test available that could quickly provide an indication of baking quality. The Kjeldahl test for protein content was accurate, but was too time-consuming for widespread use. Now, a quick and reliable test for protein content in HRW wheat is available using near-infrared relectance (NIR) instruments. These instruments are currently in use throughout the United States.

On January 24, 1979, the Administrator of the FGIS published in the Federal Register (44 FR 4988) a request for comments on a proposal to eliminate the official test for DHV kernels in HRW wheat effective May 1, 1980.

Reprints of the Federal Register were sent to interested parties in the grain trade in the United States and in foreign countries. Interested parties were given until February 23, 1979, to submit data, views, or recommendations regarding the proposal.

Eighty-eight comments were received on or before February 23, 1979: 73 supported the proposal, and 15 opposed it. The principal concern of those opposing the proposal was the possibility of disrupting the U.S. export market for HRW wheat. This was based on the fact that five wheat importing countries—Belgium, Brazil, Ecuador, the Philippines, and the U.S.S.R. opposed the proposal. The five countries imported 28.6 percent of the HRW wheat

exported by the U.S. in the 1978–79 marketing year. The opposing comments also stated that DHV is a measure of extraction and the behavior of HRW wheat during milling, and that additional marketing costs will be incurred when HRW wheat is required to be segregated on a protein basis instead of a DHV basis. The opposing commentors also suggested that if the DHV test is eliminated from the official grain inspection system, an "unofficial" test for DHV content will be needed in the U.S. grain marketing system to fulfill HRW wheat contracts.

In response to the comments received, FGIS requested meetings with the five foreign countries to provide them with data and explain the reasons the official test for DHV kernels in HRW wheat should be eliminated. In addition, two meetings were held in October 1979 in Washington, D.C., to provide interested producers, grain associations, and merchandisers further information on the proposal.

Producers and domestic merchandisers generally agree that a quick and reliable test for protein content in HRW wheat would ultimately solve the current interlaboratory differences in testing and intermarket differences in marketing HRW wheat. Export merchandisers, however, contend that the elimination of the DHV test may have an adverse impact on export sales to importers that want official DHV test results for quality control purposes, and that specify a minimum DHV content in their purchase contracts.

Supporters of the proposal want the offical test for DHV kernels eliminated because it results in discounts and economic losses to producers of HRW wheat with a low percentage of DHV kernels.

Pursuant to the authority in section 16(a) of the Act (7 U.S.C. 87(e)), It is concluded by the Administrator of the FGIS that the official test for DHV in HRW wheat should be prohibited December 10, 1979, except that the test should be available upon request by an applicant until May 1, 1980, for contracts that specify a DHV level and are outstanding on November 9, 1979. This conclusion is based on the following findings of facts:

(1) Protein content is more accurate than DHV content in measuring the baking quality of HRW wheat;

(2) The test for protein content is an objective test and provides uniform results, whereas, the test for DHV content is a subjective test and provides nonuniform results; and

(3) The subjectivity of the DHV test contributes to significant interlaboratory differences in test results and significant intermarket differences in marketing HRW wheat.

The decision to advance the proposed effective date from May 1, 1980, to December 10, 1979 is supported by the concern expressed by Congress that FGIS move "without further delay" to eliminate the DHV test in the inspection of HRW wheat under the Act. This concern was evidenced by Senate and House confrees considering FGIS appropriations for Fiscal Year 1980.

This final rule has been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and the Secretary's Memorandum 1955. It has been determined by Dr. L. E. Bartelt, Administrator, FGIS, that the emergency nature of this final rule warrants publication without opportunity for further public comment and preparation of an impact analysis at this time.

Accordingly, pursuant to the administrative procedure provisions in Section 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective December 10, 1979, except that the official test for DHV kernels in HRW wheat shall be available upon request until May 1, 1980, for contracts that specify a DHV level and are outstanding as of November 9, 1979.

This final rule will be scheduled for review under the provisions of Executive Order 12044 and the Secretary's Memorandum 1955.

(Sec. 5, 8, Pub. L. 94–582, 90 Stat. 2869, 2870 (7 U.S.C. 76, 87(e)).

Done at Washington, D.C., November 6, 1979.

L. E. Bartelt,

Administrator.

[FR Doc. 79-34814 Filed 11-8-79; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

Tri-State Generation and Transmission Association, Inc.; Intent to prepare a Draft Environmental Impact Statement, Hold an Interagnecy Meeting and Public Information Meetings

Notice is hereby given that the Rural Electrification Administration (REA), if lead agency, intends to prepare a draft environmental impact statement (EIS) in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a possible loan guarantee commitment to Tri-State Generation and Transmission Association, Inc., 12076 Grant Street, Thornton, Colorado 80241. Notice is also given that an interagency meeting and public information meetings will be held concerning the proposed project.

The statement will address a proposed 230 kV transmission line in northwestern Colorado from the Hayden Generating Station (near Hayden) to Blue River (near Dillon). Interested persons are invited to submit comments which may be helpful to REA in the preparation of a draft EIS. Comments should be sent to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

An interagency meeting will be held on December 5, 1979, at Tri-State's offices, 12076 Grant Street, Thornton, Colorado, at 9:00 a.m. Federal, state and local agencies are invited to attend. Issues to be discussed include (a) designation of the lead Federal agency, (b) determination of the project scope and identification of the significant environmental issues, (c) elimination of issues which are not significant from detailed study, (d) identification of cooperating agencies and allocating assignments to them for the EIS process, (e) identification of other environmental review, consultation, and study requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS, (f) identification of exclusion areas and/or other potential transmission corridors, and (g) Federal, state and local coordination.

Public information meetings will also be held on November 28, 1979, at the offices of the Yampa Valley Electric Association, 30 10th Street, Steamboat Springs, Colorado, at 7:00 p.m., and on November 29, 1979 at the Colorado State University Extension Office, Kremmling Fairgrounds, Kremmling, Colorado, at 7:00 p.m. These public information meetings, to be co-chaired by representatives of REA and Tri-State, will be held in order to receive public input and comments concerning the need for the project, potential transmission corridors, significant issues that should be addressed in the EIS and other matters concerning the proposal. A record will be made of the meetings and comments made will be addressed in the draft EIS.

REA encourages the general public to attend these public information meetings and provide their input. Any person or group which desires to place its comments, questions or recommendations in writing, may do so

either at the meetings or by submitting them to REA. Comments may be sent to the Rural Electrification Administration, at the address given above.

Requests for additional information or questions concerning the meetings may also be directed to Tri-State at its address given above.

Dated at Washington, D.C., this 1st day of November, 1979.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 79-34382 Filed 11-08-79; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Donahoe Creek Watershed, Texas; Finding of No Significant Impact; Correction

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact (Correction).

FOR FURTHER INFORMATION CONTACT: Mr. George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, Temple, Texas 76501, 817-774-1255.

SUPPLEMENTARY INFORMATION: A notice that an environmental impact statement is not being prepared for deauthorization of Federal funding of the Donahoe Creek Watershed was published in error in the Federal Register, Volume 44, Number 206, on October 23, 1979. The corrected notice follows.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Donahoe Creek Watershed, Bell, Milam, and Williamson Counties, Texas.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project or measure concerns a plan for stabilizing critical sediment source areas. The planned work includes land treatment measures such as clearing, shaping, preparation for vegetation, mulching, fertilizing, vegetating, fencing and construction of appurtenant grade stabilization structures needed to stabilize about 300 acres.

The finding of no significant impact has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by interested parties by contacting Mr. George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, Temple, Texas 76501, 817-774-1255. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until December 10, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Public Law 83-566, 16 U.S.C. 1001-1008.)

Dated: October 31, 1979.

Joseph W. Haas,

Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 79-34838 Filed 11-8-79; 8:45 am]

BILLING CODE 3410-16-M

Science and Education Administration

Joint Council on Food and Agricultural Sciences Executive Committee; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Science and Education Administration announces the following meeting:

NAME: Executive Committee of the Joint Council on Food and Agricultural Sciences.

DATE: November 16, 1979.

TIME AND PLACE: 8:30 a.m.-3:30 p.m., Room 336-A, Administration Building, U.S. Department of Agriculture, Washington, D.C.

TYPE OF MEETING: Open to the public. Persons may participate in the meeting as time and space permit.

COMMENTS: The public may file written comments before or after the meeting with the contact person below.

PURPOSE: Review status of putting into place the organizational structure for planning and coordination; assess written comments from Joint Council members on draft of Human Nutrition Study Report, Small Farms Study Report, the Grant and Fellowship Programs for Higher Education Report, and the Five-Year Plan for Food and Agricultural Sciences.

CONTACT PERSON: Dr. Fred E. Westbrook, Acting Executive Secretary, Joint Council on Food and Agricultural Sciences, Science and Education Administration, U.S. Department of Agriculture, Room 351-A, Administration Building, Washington, D.C. 20250, telephone (202) 447-6651.

Done at Washington, D.C., this 2nd day of November 1979.

James Nielson,

Executive Director, Joint Council on Food and Agricultural Sciences.

[FR Doc. 79-34887 Filed 11-8-79; 8:45 am]

BILLING CODE 3410-03-M

National Plant Genetics Resources Board: Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Science and Education Administration announces the following meeting:

NAME: National Plant Genetics Resources Board.

DATE: December 3-7, 1979.

TIME: 9:00 a.m.

PLACE: Centro Internacional de Mejoramiento de Maiz Y Trigo (CIMMYT) and Instituto Nacional de investigaciones Agricolas (INIA), Mexico City.

TYPE OF MEETING: Open to the public. Persons may participate in the meeting as time and space permit.

COMMENTS: The public may submit written comments to the Executive Secretary before or after the meeting.

PURPOSE: To advise the Secretary of Agriculture on policies and actions to more effectively collect, describe, and utilize plant genetic resources. Specifically, the Board and officials from CIMMYT and INIA will discuss germplasm problems of mutual interest, and how the United States and Mexico can work together more effectively in germplasm collection, storage, evaluation, and utilization in crops of interest to all parties.

CONTACT PERSON: Dr. C. O. Grogan, Executive Secretary of the Board, Science and Education Administration, Cooperative Research, Room 6440-S, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-6195.

Done at Washington, D.C., this 2nd day of November 1979.

Anson B. Betrand,

Director, Science and Education.

[FR Doc. 79-34868 Filed 11-8-79; 8:45 am]

BILLING CODE 3410-22-M

CIVIL AERONAUTICS BOARD

[Order 79-10-93]

Agreements Among Various Air Carriers for Division of Revenues From Joint Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-10-93, (Agreements Among Various Air Carriers for the division of revenues from joint transportation.)

SUMMARY: By this order, the Board is granting an exemption to air carriers from the provisions of section 412 as they would apply to the filing for Board approval of agreements for the division of joint fares and rates (prorate agreements). In order to qualify for the exemption, air carriers would be required to file, for information purposes, documents that fully disclose their prorate arrangements in foreign air transportation. The effect of the order will be to end the Board's practice of relieving carriers from filing for approval only prorate agreements reflecting a Board sanctioned formula.

DATES: Objections: All interested persons having objections to the Board's action may file petitions for reconsideration, in accordance with section 37 of the Board's Rules of Practice, 14 CFR 302.37, not later than November 27, 1979.

Filing of Documents Disclosing Prorate Arrangements: The order requires that documents disclosing existing prorate arrangements in foreign air transportation be filed not later then December 7, 1979 and that documents disclosing amendments should be filed within 30 days after they are implemented.

ADDRESSES: Petitions for Reconsideration should be filed with the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. A docket number will be assigned in the event any are received. Documents Disclosing Prorate Arrangements should be filed with the Tariffs Division, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428 and should be clearly identified as disclosures of prorate arrangements required by Order 79-10-93.

FOR FURTHER INFORMATION CONTACT: Barry L. Molar, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5918.

SUPPLEMENTARY INFORMATION: Petitions for Reconsideration should be served on the following persons: The Air Traffic Conference of America, the International Air Transport Association, and all carriers holding certificates under section 401 to engage in scheduled air transportation.

The complete text of Order 79-10-93 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-10-93 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: October 16, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-34817 Filed 11-8-79; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice is hereby given that, during the week ended November 2, 1979 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
Oct. 30, 1979	33823	USAir, Inc., Washington National Airport, Washington, D.C. 20001. Amended Application of USAir, Inc. pursuant to Section 401 of the Act and Part 201 and Subpart Q of Part 302 of the Economic Regulations of the Civil Aeronautics Board requesting amendment of its certificate of public convenience and necessity for Route 97 so as to authorize USAir to engage in scheduled nonstop air transportation of persons, property and mail between Baltimore, Maryland, and Washington, D.C., on the one hand, and several other points, on the other hand, by amending USAir's certificate for Route 97 to include two new segments as follows: "Between the alternate terminal points, Baltimore, Maryland; Washington, D.C. (National); and Washington, D.C. (Dulles); and the alternate terminal points Chicago, (O'Hare) and Chicago (Midway), Illinois; Dallas/Ft. Worth, Texas; Kansas City, Missouri; Milwaukee, Wisconsin; and Nashville, Tennessee." "Between the alternate terminal points Washington, D.C. (National) and Washington, D.C. (Dulles) and the terminal point Indianapolis, Indiana." Conforming answers and applications are due November 27, 1979.
Nov. 1, 1979	37024	Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10016. Application of Trans World Airlines, Inc. under Subpart Q requests the Board to amend its certificate of public convenience and necessity by adding a new route so as to authorize nonstop service between Miami, Florida and Caracas, Venezuela. Conforming answers and applications are due by November 29, 1979.
Nov. 1, 1979	37025	Surinam Airways Limited, c/o Harry A. Bowen, 234 Georgetown Building, 2233 Wisconsin Avenue, N.W., Washington, D.C. 20007. Application of Surinam Airways, Limited pursuant to Section 402 of the Act and Part 211 of the Board's Economic Regulations and Subpart Q of the Board's Rules of Practice requesting an amendment to its foreign air carrier permit so it will provide as follows: Authority to engage in foreign air transportation of passengers, property and mail between a point or points in Suriname and the terminal point Miami, Florida via the intermediate points Georgetown, Guyana; Port of Spain, Trinidad, Panama and Curacao, Netherlands Antilles. Answers may be filed on November 29, 1979.
Nov. 1, 1979	37031	Leico, Inc. d.b.a. Air Berlin USA, c/o Richard Murray, Pompan, Jaffe & Murray, 1100 Connecticut Avenue, N.W., Suite 510, Washington, D.C. 20036. Application of Leico, Inc. d.b.a. Air Berlin USA under Subpart Q requests the Board to engage in non-stop air transportation of persons, property and mail between the coterminal points Ft. Lauderdale/Tampa/Orlando, Florida and the terminal point West Berlin, Germany via the intermediate point Brussels, Belgium, and that the said Board grant such other, additional and/or different relief as the public convenience and necessity may require, including the award to Air Berlin USA of authority to serve other points with the general area of the territory proposed to be served by Air Berlin USA. Answers may be filed on November 30, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-34809 Filed 11-8-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37009]

Trans World Airlines, Inc., Discount Fare Advertising; Assignment of Enforcement Proceeding

This proceeding is hereby assigned to Administrative Law Judge William H. Dapper. Future communications should be addressed to Judge Dapper.

Dated at Washington, D.C., November 2, 1979.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 79-34810 Filed 11-8-79; 8:45 am]

BILLING CODE 6320-01-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 10:00 a.m. and will end at 2:00 p.m., on December 1, 1979, at the Airport Holiday Inn, Navigators Room, 9901 South La Cienega Boulevard, Los Angeles, California.

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 plan future State Advisory Committee activities and schedule future meetings.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., November 5, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-34676 Filed 11-8-79; 8:45 am]

BILLING CODE 6335-01-M

Maine 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 Maine Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and will end at 9:00 p.m., on November 29, 1979, at the Maine Teachers Assocation Building, Civic Center, Augusta, Maine.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office of the Commission, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

The purpose of this meeting is to discuss monitoring of the 1980 census; plan sexual harassment in employment project; and to evaluate press and public response to release of consultation report on October 15, 1979.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., November 1, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-34673 Filed 11-8-79; 8:45 am]

BILLING CODE 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 9:00 p.m., on December 4, 1979, at the Ramada Inn, Route 18, Schoolhouse Lane, New Brunswick, New Jersey.

Persons wishing to attend this open meeting should contact the Committee Chairperson, of the Eastern 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 for fiscal 1980–1981.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., November 5, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-34677 Filed 11-8-79; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island 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 Rhode Island Advisory Committee (SAC) of the Commission will convene at 5:00 p.m. and will end at 7:00 p.m., on November 28, 1979, at the Brown University, Third World Center Lounge, Churchill House, 155 Angell Street, Providence, Rhode Island 02912.

Persons wishing to attend this open meeting should contact the Committee Chairperson, of the New England Regional Office of the Commission, 55 Summer Street, 8th floor, Boston, Massachusetts 02110.

The purpose of this meeting is program planning.

This meeting will be conducted pursuant to the provision of the rules and regulations of the Commission.

Dated at Washington, D.C. November 1, 1979.

John I. Binkley,

Advisory Committee Managenemt Officer.

[FR Doc. 79-34675 Filed 11-8-79; 8:45 am]

BILLING CODE 6335-01-M

Virginia 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 Virginia Advisory Committee (SAC) of the Commission will convene at 4:00 p.m. and will end at 9:30 p.m., on November 29, 1979, at the Holiday Inn Downtown, 301 West Franklin Street, Richmond, Virginia 23220.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is program planning for fiscal 1980–1981.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C. November 1, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-34674 Filed 11-8-79; 8:45 am]

BILLING CODE 6335-01-M

Delaware Advisory Committee; Meeting; Amendment

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a factfinding meeting of the Delaware Advisory Committee (SAC) of the Commission originally scheduled for November 21, 1979, in Wilmington, Delaware, (FR Doc. 79-33643 on page 62551) has been changed.

The meeting now will be held on November 20, 1979.

The location and time will remain the same.

Dated at Washington, D.C., November 6, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-34670 Filed 11-8-79; 8:45 am]

BILLING CODE 6335-01-M

Pennsylvania 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 Pennsylvania Advisory Committee (SAC) of the Commission will convene at 12:00 p.m. and will end at 4:30 p.m., on November 30, 1979, at the Fellowship Commission Auditorium, 260 South 15th Street, Philadelphia, Pennsylvania 19102.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is program planning and discussion of civil rights developments in Pennsylvania.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., November 6, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-34672 Filed 11-8-79; 8:45 am]

BILLING CODE 6335-01-M

Vermont 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 Vermont Advisory Committee (SAC) of the Commission will convene at 7:45 p.m. and will end at 9:45 p.m., on November 28, 1979, at the Tavern Motor Inn, Montpelier, Vermont.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office of the Commission, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

The purpose of this meeting is to discuss planning of upcoming conference on Franco-Americans.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 6, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-34671 Filed 11-8-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 11-79]

Proposed Foreign-Trade Zone—Brownsville, Tex.; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Brownsville Navigation District, a Texas public corporation, requesting authority to establish a foreign-trade zone in Brownsville, Texas, within the Brownsville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 31, 1979. The Brownsville Navigation District, as applicant, is authorized to make this proposal under Senate Bill No. 1105, Texas Legislature, signed June 13, 1979.

The proposal calls for the establishment of a foreign-trade zone at the Port of Brownsville, a deepwater port near the U.S./Mexico border. The zone would consist of several sites on 2,000 acres within the 42,000-acre Brownsville Navigation District and at the nearby Brownsville International Airport. Within the navigation district the land involved is owned by the applicant, while the airport tract is owned by the City of Brownsville. The applicant states that the zone will assist it in its port and industrial development efforts.

The application contains economic data and information concerning the need for providing zone services to the Brownsville area. Several firms have indicated their intention to use the zone. Public warehousing services would be provided at a general-purpose warehouse already in operation on the proposed site. Over 450,000 square feet of rentable space is available.

Among the proposed tenants are firms presently conducting manufacturing and service activities on about 500 acres of the requested area. They include: Two petroleum refinery operations in which imported crude oil is processed into gasoline and fuel oils for domestic consumption; An importer of petrochemicals, solvents, and edible oils for blending with domestic materials and ultimate reexport; A ship scrapping operation producing metal scrap for reexport; A processor of imported nonmetallic ores (e.g. fluorspar, barites) and non-ferrous ores (e.g. chrome, lead, zinc) to produce concentrates and pellets for further chemical conversions; An oil recycling operation which produces marketable fuel oil from ships ballast oil; A manufacturer of wooden pallets using imported lumber; and, A manufacturer of swimming pool equipment from imported bulk plastics.

In addition, facilities are under construction on sections of the proposed zone area for operations that will occupy another 25 acres. These operations involve: The repair and refurbishment of used construction equipment for reexport; The manufacture of fish nets, instruments and other marine industrial supplies; and, The refurbishing of domestic and foreign rail cars for reexport.

The 235-acre airport site and the remaining 1,240-acre area in the Port district are being requested for prospective future industrial tenants. The airport site is expected to be used for electronics and aviation-related assembly operations, while the larger site could eventually house a desalination plant, a cement plant, an aluminum reduction plant and a sulphuric acid plant. Subsequent approval from the Board would be required for these potential future operations.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The Committee consists of Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230; Ernest J. Gonsoulin, Director (Inspection and Control), Region VI, U.S. Customs Service, 500 Dallas Street, Suite 1240,

Houston, Texas 77002; and Colonel James M. Sigler, Army District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, Texas 77443.

As part of its investigation of the proposal, the Examiners Committee will hold a public hearing on December 6, 1979, beginning at 9:00 a.m., in Stillman Town Hall, Fort Brown Memorial Center, 600 International Boulevard, Brownsville, Texas 78520. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested persons or their representatives are invited to present their views at the hearing. They should notify the Board's Executive Secretary by November 29 of their desire to be heard in writing at the address below or by phone (202) 377-2862. In lieu of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the Examiners Committee, care of the Executive Secretary, at any time from the date of this notice through January 7, 1980. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing.

A copy of the application and accompanying exhibits will be availale for public inspection during the comment period at each of the following locations:

Administrative Offices, Brownsville Navigation District, Port of Brownsville, Highways 48 and 511, Brownsville, Texas 78520.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886-B, Washington, D.C. 20230.

Dated: November 6, 1979.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 79-34891 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

Industry and Trade Administration

University of Michigan; et al.; Applications for Duty-Free Entry of Scientific Articles

Correction

In FR Doc. 79-33843 appearing at page 62925 in the issue for Thursday, November 1, 1979, on page 62925, in the third column, in the paragraph "Docket No. 79-00440. Applicant: Tennessee Dept. of Agriculture * * *", after the last line insert "Application Received by Commissioner of Customs: September 29, 1979."

BILLING CODE 1505-01-M

Buffalo General Hospital; Notice of 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 (Pub. L. 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. at 666-11th Street, NW. (Room 735) Washington, D.C.

Docket number: 79-00329. Applicant: The Buffalo General Hospital, 100 High Street, Buffalo, New York 14203. Article Urodynamic Amplifier, Calibrator and Withdrawal. Manufacturer: Vingmed, Norway. Intended use of article: The article is intended to be used in the evaluation and treatment of secondary and atypical urinary incontinence as part of a full spectrum of study to be offered. The degree to which elasticity and distensibility of the uretha influence significantly urethal tone and intraurethral pressure. This will further evaluate the presently undetermined significance of varying degrees of urethral stricture of diverse causes in the female. Since continence is a phenomenon relating to a simultaneous comparison of intravesical and intraurethral pressure, simultaneous recordings of both are essential to its study. This study is a part of an educational program for third and fourth year medical students and first, second, third and fourth year residents in obstetrics and gynecology who are in the SUNY/AB residency program.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: This application is a resubmission of Docket Number 79-00089 which was denied without prejudice to resubmission on June 1, 1979 for informational deficiencies. The foreign article provides simultaneous recordings of rapid pressure variation in the bladder and urethra. The Department of Health, Education, and Welfare advises in its memorandum dated October 11, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34719 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

Carnegie-Mellon University; Notice of 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 (Pub. L. 89-651, 80 Stat. 879) 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. at 666-11th Street NW. (Room 735) Washington, D.C.

Docket number: 79-00315. Applicant: Carnegie-Mellon University, Department of Chemistry, 4400 Fifth Avenue, Pittsburgh, PA 15213. Article: Vibrating Densimeter, Model 02D. Manufacturer: Sodev, Inc., Canada. Intended use of article: The article is intended to be used for studies of various liquids and solutions such as polymer solutions and solutions of electrolytes in water. Actual experiments will involve the determination of the period of the tuning fork oscillations in order to obtain molecular parameters for the liquids and solutions.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides measurements under flow conditions with a resolution of one part per million. The National Bureau of Standards advises in its memorandum dated September 28, 1979 that (1) the capability of the foreign article described above is pertinent to the

applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34713 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

Harvard University; Notice of 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 (Pub. L. 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. at 666 11th Street NW. (Room 735), Washington, D.C.

Docket number: 79-00277. Applicant: Harvard University, Purchasing Department, 75 Mt. Auburn Street, Cambridge, Massachusetts 02138. Article: Cryostat System Dittes-Duspiva Model "T" and Accessories. Manufacturer: Walter Dittes, West Germany. Intended use of article: The article is intended to be used for a large number and variety of experiments that will be performed with the brains of monkeys and rats. In some experiments, thin sections of whole brain are examined under the fluorescence microscope to map the distribution of certain monoamine transmitter compounds. In others, the sections are treated with antisera against specific transmitters of their enzymes in order to find out where they are in the brain. In still others, a foreign protein, used as a tracer, is injected into the brain and is taken up by nerve endings. The objectives pursued in these investigations are: to learn the distribution of certain transmitter chemicals and related compounds, of their synthesizing and degrading enzymes; and of their uptake sites in the brain, and to learn the projections and connection of the various centers in the brain with one another, and thus to understand at a cellular level the organization of the mammalian brain.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides specimen stretching during the cutting process. The Department of Health, Education, and Welfare advises in its memorandum dated September 13, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34716 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

IIT Research Institute; Notice of 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 Education, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 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 p.m. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket number: 79-00344. Applicant: IIT Research Institute, 10 West 35th Street, Chicago, Illinois 60616. Article: 12KW High Brillance Rotating Anode X-Ray Generator with Accessories. Manufacturer: Rigaku, Japan. Intended use of article: The article is intended to be used for studies of aerosol samples (powders on filter paper), pressed powder samples, or solid samples of crystalline material requiring qualitative or quantitative crystal struture analysis. The experiments involve rapid and automatic qualitative and quantitative measurement of the crystal structure of the sample constituents by measurement of the x-ray diffraction patterns.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a rotating anode for 12 kilowatt high power operation. The National Bureau of Standards (NBS) advises in its memorandum dated October 17, 1979 that the capability described above is pertinent to the purposes for which the foreign article is intended to be used. NBS also advises that it knows of no domestic instrument of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34722 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

Kansas State University; Notice of 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 (Pub. L. 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 p.m. at 666 11th Street, NW. (Room 735) Washington, D.C.

Docket number: 79-00322. Applicant: Kansas State University, Dept. of Chemistry, Manhattan, Kansas 66506. Article: Carbon Dioxide Laser, TEA-103-2 and Accessories. Manufacturer: Lumonics Research Limited, Canada. Intended use of article: The article is intended to be used to study the influence of high power laser energy upon chemical reactions. The chemical phenomena to be studied include, but are not limited to the following:

(a) Enhancement of rates of known chemical reactions by laser radiation.

(b) Initiate new chemical reactions via laser radiation.

(c) Identification of vibrational energy transfer pathways initiated by laser radiation.

(d) Study of rotational energy transfer in diatomic and triatomic molecules.

(e) Development of laser induced reactions for synthesizing novel organic compounds and transient intermediates.

The article will also be used for training students in laser techniques as related to chemistry in the courses: Ph.D. Research in Chemistry, M.S. Research in Chemistry, Problems in Undergraduate Chemistry.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides at least 15 joules per pulse. The National Bureau of Standards advises in its memorandum dated September 27, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34717 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

Massachusetts Institution of Technology; Notice of 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 (Pub. L. 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 p.m. at 666-11th Street NW. (Room 735) Washington, D.C.

Docket number: 79-00258. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Nuclear Magnetic Resonance Spectrometer, Model JNM/FX-60Q and Accessories. Manufacturer: JOEL Ltd., Japan. Intended use of article: The article is intended to be used for studies of organic compounds and organometallic substances either synthesized in the laboratories, or obtained from natural sources. The ^{13}C and proton nmr spectra of the above materials will be obtained for the purposes of elucidating their structures and/or chemical properties. Specific projects to be undertaken include: (1) Synthesis of Metabolic Intermediates, (2) Synthesis of Anticancer Agents, (3) Isolation, Structure Elucidation and Synthesis of Food Borne Mycotoxins, (4) Synthesis of the Antitumor Antibiotic, Bleomycin, (5) Synthesis of Molecular Cages, (6) Synthesis of Natural Products of Interest to Medicine, (7) Investigations on Azo Dioxide-Nitrosoalkane Equilibria, (8) Investigations of Azoxy Compounds, (9) Synthesis of the Antitumor Antibiotic, Bleomycin, (10) Synthesis of *sym*-Oxepin Oxides, (11) Synthesis of Biological Oxidations: Flavin Derivatives, and (12) Studies of Molecular Complexation. The article will also be used to teach the application of various nmr techniques for the determination of molecular structure and for the identification of unknown organic compounds in the course Chemistry 5.56, Special Topics in Organic Chemistry: Interpretation of Carbon-13 NMR Spectra.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States at the time the foreign article was ordered (October 6, 1977). Reasons: This application is a resubmission of Docket Number 78-00065 which was denied without prejudice to resubmission on October 20, 1978 for informational deficiencies. The foreign article provides the capabilities for measuring T_{1rho}, the spin-lattice relaxation time in the rotating frame. The Department of Health, Education, and Welfare advises in its memorandum dated September 18, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States at the time the foreign 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. 79-34711 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

Mount Sinai School of Medicine; Notice of 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 (Pub. L. 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 p.m. at 666-11th Street, NW. (Room 735) Washington, D.C.

Docket number: 79-00345. Applicant: Mount Sinai School of Medicine, Fifth Avenue and 100th Street, New York, New York 10029. Article: Hemofiltration Unit BF 910 and adjuncts. Manufacturer: Bellco-Germany GmbH, Germany. Intended use of article: The article is intended to be used in research involving the comparison of hemofiltration in a clinical trial with conventional hemodialysis to establish the clinical usefulness of this treatment, the costs involved and to gain insight into the nature of endstage renal failure.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides exact balancing of the fluid volumes generated by the ultrafiltrate pump with the replacement solution returned to the patient. The Department of Health, Education, and Welfare advises in its memorandum dated October 11, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value

to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34715 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

National Cancer Institute, National Institutes of Health; Notice of 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 Education, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 879) 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 p.m. at 666—11th Street, NW. (Room 735) Washington, D.C.

Docket number: 79-00294. Applicant: National Cancer Institute, 9000 Rockville Pike, National Institutes of Health, Building 37, Room 5A19, Bethesda, Maryland 20014. Article: LKB 2258-041 PHV Cryo-Micro-tome Type 160 and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the following investigations: (1) autoradiographic drug and chemical distribution studies of whole animals as well as fetal distribution studies of teratogenic compounds; (2) histochemical studies of hormone and enzyme localization in cells and tissues of large specimens; (3) metabolism studies of drugs and toxic or carcinogenic environmental agents; and (4) gross morphology and low powered light microscopy examination of whole human organs and animals to measure tumor metastasis.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides the capability to section very large specimens (up to 16 x 14 centimeters). The National Bureau of Standards advises in its memorandum dated October 9, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34714 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

University of California; Notice of 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 (Pub. L. 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 p.m. at 666-11th Street, NW. (Room 735) Washington, D.C.

Docket number: 79-00330. Applicant: University of California, Lawrence Livermore Laboratory, P.O. Box 5012, Livermore, CA 94550. Article: Electron Framing Camera System. Manufacturer: John Hadland Photographic Instrumentation, United Kingdom. Intended Use of Article: The article is intended to be used as a diagnostics tool for the Beta II machine in the Magnetic Fusion Energy Program. A plasma gun is being built for Beta II to generate a field-reversal target plasma for neutral beam heating and confinement studies. In addition to field-reversal experiments Beta II will be capable of continuing studies of plasma startup, stabilization and confinement in support of the Mirror Fusion Test Facility. The article will be used to take framing photographs of the discharge from a coaxial plasma generating gun at the rate of 8 or 16 frames per discharge. These photo diagnostics will be used to study the symmetry, size, shape, and time development of the plasma ring, and the development and confinement of the plasma.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides up to 16 frames per event. The National Bureau of Standards advises in its memorandum dated October 2, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34718 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

University of Chicago-Argonne; Notice of 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 (Pub. L. 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 p.m. at 666—11th Street NW. (Room 735) Washington, D.C.

Docket number: 79-00333. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Illinois 60439. Article: Automatic Displacement Indicator. Manufacturer: Automatic Systems Laboratories, United Kingdom. Intended use of article: The article is intended to be used in the investigation of the long-term (up to six months), nonlinear and very small deformation of nuclear reactor materials.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the

United States. Reasons: The foreign article provides an accuracy of ±0.0004 percent of full scale, a resolution of one part per million, less than 0.01 percent non-linearity and long term stability. The National Bureau of Standards advises in its memorandum dated October 12, 1979 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34712 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

University of Illinois; Notice of 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 (Pub. L. 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 p.m. at 666-11th Street NW. (Room 735) Washington, D.C.

Docket number: 79-00323. Applicant: University of Illinois, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. Article: Superconducting Solenoid. Manufacturer: Oxford Instruments Ltd., United Kingdom. Intended use of article: The article is intended to be used to generate a magnetic field which is strong, spatially uniform, and steady in time in studies of wide variety of problems in the broad area of solid state physics.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: This application is a resubmission of Docket Number 78-00399 which was denied without prejudice to resubmission on January 31, 1979 for informational deficiencies. The foreign article has a field stability of 1 part in 10^7 with simultaneous low helium loss (less than 25 milliliters per hour (ml/hr) while the solenoid is in the persistent mode, less than 55 ml/hr with sweep coil leads attached, and less than 100 ml/hr with sweep coils fully energized). The National Bureau of Standards advises in its memorandum dated October 10, 1979 that (1) the capabilities of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus if equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(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. 79-34720 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

University of Kansas; Notice of 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 (Pub. L. 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 p.m. at 666 11th Street, NW. (Room 735) Washington, D.C.

Docket number: 79-00328. Applicant: University of Kansas, 2095 Ave. A—Campus, West, Lawrence, Kansas 66044. Article: Flow Micro Calorimeter, Model LKB 2107-121 and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the study of the thermodynamics of bile and miscellar solution, and to determine the variation of these solutions and to determine the variation of these properties with the structure of the bile salt. The enthalpy and heat capacity of these complex micellar solutions will be measured as a function of temperature, bile salt structure and added electrolyte. In addition, the article will be used by students enrolled in "Undergraduate Research in Pharmaceutical Chemistry" "Doctoral Dissertation" and "Post-doctoral Research in Pharmaceutical Chemistry".

Comments: No comments have been received with respect to this application. Decision: Application approved. No 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 application was received at the U.S. Customs Service (June 25, 1979). Reasons: The foreign article provides a sensitivity of one microwatt continuous or a 200 microjoule pulse. The Department of Health, Education, and Welfare advises in its memorandum dated October 11, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States at the time this application was received by the U.S. Customs Service.

(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. 79-34721 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-25-M

Office of the Secretary

Proposed Implementation of the Federal Employees Part-Time Career Employment Program

AGENCY: Department of Commerce.

ACTION: Proposed Implementation of the Federal Employees Part-time Career Employment Act of 1978, 5 U.S.C. 3401 et seq. by establishing a continuing program to provide career part-time employment opportunities within all component organizations of the Department of Commerce. The proposed regulations are not significant under Executive Order 12044.

In accordance with 5 U.S.C. 3406, the Department of Commerce is required to publish its instructions in proposed form and to provide an opportunity for interested parties to comment. After comments have been received and reviewed, the final instructions will be

issued as Department Administrative Order 202-340. Copies of DAO 202-340 will be available to the public and can be obtained by writing to the address indicated below.

DATES: Written comments will be considered if received by the official named below on or before January 9, 1980. The final instructions shall be effective on the date issued.

ADDRESS: Clifford J. Parker, Acting Director of Personnel, Room 5001, 14th and Constitution Avenue, NW, Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Carris H. House, Jr., Phone: 202-377-4861 (this is not a toll-free number).

Part-Time Career Employment Program

I General Provisions
II Program Implementation
III Part-time Employment Practices

I. General Provisions

A. *Purpose.*—These regulations implement the Federal Employees Part-time Career Employment Act of 1978, 5 U.S.C. 3401 et seq, by establishing a continuing program to provide career part-time employment opportunities within the Department of Commerce (The Department).

B. *Delegation.*—These regulations may be supplemented or amended, as required, from time to time by the Director of Personnel.

C. *Policy.*—It is the policy of the Department to provide career part-time employment opportunities to the maximum extent consistent with agency resources and mission requirements for positions in GS-1 through 15, for hourly paid blue collar positions, and any other career positions which do not exceed a GS-15 equivalent. This policy recognizes the desirability of making maximum use of all available human resources, including those qualified individuals who are available for part-time employment. It represents an opportunity to acquire talented workers who might otherwise not be available to the Department. Selections of part-time employees shall be made without regard to religion, race, color, national origin, marital status, sex, age, nondisqualifying physical handicap, political or labor organization affiliation, or personal favoritism.

D. *Definitions.*—1. *Part-time career employment* is regularly scheduled work of from 16 or 32 hours a week in either the permanent competitive or excepted service in Tenure Group I or II. Employment on a temporary or intermittent basis is not included.

2. *Tenure Group I* includes employees in the competitive service under career appointments who are not serving probation, and permanent employees in the excepted service whose appointments carry no restrictions or conditions.

3. *Tenure Group II* includes employees in the competitive service serving probation, career conditional employees, and career employees in obligated positions; it also includes employees in the excepted service serving a trial period, whose tenure is indefinite solely because they occupy obligated positions, or whose tenure is equivalent to career conditional in the competitive service.

E. *Scope.*—The provisions herein are applicable to all bureaus, operating units, and the Office of the Secretary. Within these regulations, the term "bureau" means each operating unit and the Office of the Secretary.

F. *Exceptions.* 1. These regulations do not apply to positions in the Senior Executive Service or positions at GS-16 (or equivalent) and above, or to positions where an existing collective bargaining agreement establishes the number of hours of employment per week; nor do they apply to career part-time employees who were working on a permanent part-time basis on the effective date of the Act (April 8, 1979) so long as they continue to work on a part-time basis, do not have a break in service of more than three days, or leave their part-time service of more than three days, or leave their part-time schedule on other than a temporary basis.

2. The Secretary of Commerce, or designee, may authorize such additional exceptions as may be necessary for the Department to carry out its mission. However, in no cases will exceptions be authorized to permit regular tours of duty of 33 to 39 hours per week for part-time employees. (This in no way restricts the increase of a permanent part-time employee's actual hours of work above 32 hours per week for limited periods to meet heavy workloads, etc.)

3. Employment of part-time staff for less than 16 hours per week may be permitted when absolutely necessary to carry out the Department's mission.

II. Program Implementation

A. *Designation of Coordinators.* 1. *Departmental Coordinator.*—The Employment Officer (Office of Personnel, Staffing and Employee Relations Division) is designated as the Part-time Employment Program Coordinator for the Department. The Program Coordinator is responsible for the following:

a. Reviewing program goals and timetables developed by the bureaus within the Department;

b. Monitoring the Program for Equal Employment Opportunity effectiveness;

c. Serving as the Departmental liaison with groups, organizations, and individuals promoting part-time employment;

d. Responding to bureau requests for policy guidance on the Program;

e. Preparing consolidated reports on the Program as required by the Act, the Office of Personnel Management, or other Federal offices;

f. Monitoring overall progress of the program within the Department; and

g. Acting as focal point for all other aspects of the program.

2. *Bureau Coordinators.* Each bureau shall designate a Part-time Empoyment Coordinator who shall have overall responsibility for carrying out the bureau's Program. The Bureau Coordinators' responsibilities include the following:

a. Overseeing development and implementation of part-time employment goals and timetables, coordinating with budget and ceiling control staff as necessary;

b. Obtaining regular imput from bureau officials of the Equal Employment Opportunity, Federal Women's, and Hispanic Employment Programs to assure that goals and timetables address specific needs for providing employment opportunities for minorities and women, and to assess the effect of the bureau Part-time Employment Program on employment patterns and occupational concentration of minorities and women;

c. Consulting on the bureau Part-time Employment Program with interested parties in special interest areas (e.g., employment of the handicapped, employment of veterans, and upward mobility) and with representatives of employee organizations, etc.;

d. Responding to requests for advice and assistance on part-time employment from within the bureau;

e. Maintaining bureau liaison with groups promoting part-time employment opportunities;

f. Preparing reports on part-time employment for transmittal to the Departmental Coordinator;

g. Monitoring progress in expanding part-time employment opportunities; and

h. Insuring that bureau managers, supervisors, and employees are kept informed on all aspects of the Part-time Employment Program which affect them.

B. *Part-Time Employment Goals and Timetables.* 1. Each bureau shall set annual nationwide goals for both establishing and converting positions for part-time career employment, including a timetable with interim and final deadlines for achieving such goals. Goals for each each fiscal year (beginning with fiscal year 1980) must be established and reported to the Departmental Coordinator by the end of the preceding fiscal year. Separate goals shall be established for: (a) newly established part-time career positions and (b) conversion of full-time career positions to part-time career positions.

2. In establishing goals and timetables, bureaus are required to consider such criteria as:

a. Agency mission and occupational mix;

b. Workload fluctuations;

c. Size of workforce, turnover rate, or employment trends;

d. Affirmative action;

e. Past experience with part-time employment (to include analysis of current part-time employment utilization);

f. Patterns of overtime utilization;

g. Potential for improving service to the public; and

h. Personnel ceiling allowances and fiscal constraints.

C. *Program Evaluation and Reporting.*—1. The Part-time Career Employment Program will be subject to continuing review and evaluation by the Department Program Coordinator.

2. Each bureau is required to provide for a periodic internal evaluation of its Program.

3. Bureau reports as of March 31 and September 30 of each year shall be submitted to reach the Departmental Coordinator no later than April 30 and October 31 respectively. These reports must address the bureau's progress in meeting its part-time employment goals, noting any impediments encountered and measures taken to overcome them, and must indicate specifically the extent to which part-time career employment opportunities have been extended to older persons, the handicapped, persons balancing family responsibilities with the need for additional income, and students. A copy of any pertinent bureau regulation or instruction issued during the reporting period shall be attached to each report. The report will satisfy the requirements of IIC2.

4. The Departmental Coordinator shall prepare and forward a consolidated Departmental report to the Office of Personnel Management by May 15 and November 15 of each year. Such reports will contain the same material required in bureau reports.

5. Bureau reports are required for the period from April 1 through September 30, 1979, showing efforts and progress in furthering part-time career employment opportunities, even though goals and timetables were not established for that period.

III Part-time Employment Practices

A. *Vacancy Position Review.*—Bureaus are required to establish procedures providing for all vacant positions covered by the Program to be reviewed for the feasibility of being filled on a part-time career employment basis. This review shall include consideration of criteria such as those used to establish goals and timetables.

B. *Establishment and Conversion of Part-time Career Positions.* 1. Bureaus are required to establish a sufficient number of new or converted part-time career positions to meet their established goals.

2. Bureaus which have not already done so shall develop procedures to permit employees to request and receive consideration to change from full-time to part-time schedules. Opportunities to voluntarily change from full-time to part-time employment shall be given to employees whenever feasible. However, no full-time employee shall be required to accept part-time employment as a condition of continued employment.

3. Bureaus shall not abolish any full-time position occupied by an employee for the sole purpose of making the duties of the position available to be performed on a part-time career employment basis.

C. *Notifying the Public of Part-Time Vacancies.*—Bureaus shall notify the public of vacant part-time positions through such methods as Federal Job Information announcements, position vacancy listings, and other means as they may develop for the program.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 79-34073 Filed 11-8-79; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

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: November 9, 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 August 10, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (44 FR 47134) 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 7220

Mat, Floor, 7220-00-457-6057, 7220-00-457-6063, 7220-00-151-6519, 7220-00-151-6518, 7220-00-151-6517, 7220-00-477-3063, 7220-00-194-1609, 7220-00-457-6046, 7220-00-457-6054

C. W. Fletcher,

Executive Director.

[FR Doc. 79-34073 Filed 11-8-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Proposed Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Deletions from Procurement List.

SUMMARY: The Committee has received proposals to delete from Procurement List 1979 commodities produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 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: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

It is proposed to delete the following commodities from Procurement List 1979, November 15, 1978 (43 F.R. 53151):

Class 7110

Bookcase, Wood, Executive, 7110-00-290-0368

Class 8460

Suitcase, Coated Cloth, Nylon, 8460-01-014-1972

C. W. Fletcher,

Executive Director.

[FR Doc. 79-34762 Filed 11-8-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals 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: December 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: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, 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 F.R. 53151):

Class 4130

Filters, Air Conditioning

4130-00-870-8796, 4130-00-720-4143, 4130-00-756-0978, 4130-00-959-4734, 4130-00-274-7800, 4130-00-249-0966, 4130-00-541-3220, 4130-00-203-3318, 4130-00-542-4482, 4130-00-951-1208, 4130-00-756-1840, 4130-00-203-3321.

Class 8465

Bag, Sleeping, Firefighter's, 8465-00-081-0798 (GSA National Capital Region)

C. W. Fletcher,

Executive Director.

[FR Doc. 79-34761 Filed 11-8-79; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Toxicological Advisory Board; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Meeting: Toxicological Advisory Board.

SUMMARY: This notice announces a meeting of the Toxicological Advisory Board on Tuesday, November 27, 1979, from 8:30 A.M. to 5 P.M. and Wednesday, November 28, 1979, from 8:30 A.M. to 2:30 P.M. The meeting, which is open to the public, will be held in Room 456 at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Catherine Bolger, Office of the Secretary, Suite 300, 1111 18th Street, N.W., Washington, D.C. 20207 (202) 634-7700.

SUPPLEMENTARY INFORMATION: The Toxicological Advisory Board is a newly-established nine-member advisory committee which advises the Commission on precautionary labeling for acutely toxic household substances and on instructions for first aid treatment labeling. In addition, the Board reviews labeling requirements that have been issued under the Federal Hazardous Substances Act and recommends revisions it deems appropriate. The Toxicological Advisory Board was created on November 10, 1978, under the authority of Section 10 of the 1978 CPSC Authorization Act (Pub. L. 95-631).

Both days of the meeting will be devoted to a discussion of acids for which labeling advice appears in the CPSC Labeling Guide. For specific information on the acids that will be discussed, contact Catherine Bolger at the address above.

The two-day meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations to the Toxicological Advisory Board should notify the Office of the Secretary (see address above) by November 20, 1979.

The notification should list the name of the individual who will make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Board may be allowed by the presiding officer. Requesters will be informed of the decision before the meeting.

Dated: November 7, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-34889 Filed 11-8-79; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Environmental Advisory Board; Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that the next meeting of the Environmental Advisory Board (EAB) of the Chief of Engineers will be held November 28-30, 1979 in Room 103 of the Huntsville Division Engineer Training Center for Professional Development, 1309 North Memorial Parkway, Huntsville, Alabama. Time and subjects of each session follow:

28 November—Wednesday—A.M. Session

0930—Meeting convened.

0930-1030—Discussion on June and September EAB meetings.

1030-1200—Introduction to Corps Environmental Training Program.

1200-1330—Lunch.

P.M. Session

1330-1700—Corps environmental training—A series of short presentations followed by discussion.

1700—Meeting adjourned for the day.

29 November—Thursday—A.M. Session

0800—Meeting convened.

0800-1120—Corps environmental training continued.

1120-1300—Lunch.

P.M. Session

1300-1600—Corps environmental training continued.

1600-1700—Public comment period on Corps environmental training program.

1700—Meeting adjourned for the day.

30 November—Friday—A.M. Session

0800—Meeting convened.

0800-1130—Workshop for EAB members.

1130-1300—Lunch.

P.M. Session

1300-1330—Workshop for EAB members.

1330-1410—Discussion on EAB observations and recommendations regarding Corps environmental training program.

1410-1420—Public comments on Corps environmental training program.

1420-1430—Scoping of February 1980 meeting.

1430—Meeting adjourned.

Meeting room has limited seating capacity. Written statements, to be made part of the minutes, may be submitted prior to, or up to 10 days following the meeting. Persons planning to attend or desiring further information should contact LTC George F. Boone, Assistant Director of Civil Works, Environmental Programs, Office of the

Chief of Engineers, Telephone: 202-272-0103.

Marian G. Spittle,

Army Liaison Officer with the Federal Register.

[FR Doc. 79-34639 Filed 11-8-79; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Cherokee Texaco, Cherokee, N.C.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Cherokee Texaco, Cherokee, North Carolina, 28719, on September 10, 1979.

This Proposed Remedial Order charges Cherokee Texaco with selling all grades of gasoline in excess of the maximum lawful selling price in violation of 10 CFR 212.93. It was determined that Cherokee Texaco violated the Federal Energy Pricing Guidelines by selling above the maximum lawful selling price in the amounts of 3.9¢ per gallon for Regular Leade, 7.9¢ for Premium Leaded and 6.65¢ for Regular Unleaded. Additionally, Cherokee Texaco failed to post the maximum lawful selling price for each grade of gasoline as required by 10 CFR 212.129.

Pursuant to 10 CFR 205.192, Cherokee Texaco is required by the Proposed Remedial Order to rollback its prices at the pump to effect a refund of $153.45 in overcharges to its customers.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, Southeast District, Office of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia, 30309, Phone: (404) 881-2661. Within 15 days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C., 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia, on the 1st day of November, 1979.

James C. Easterday,

District Manager.

[FR Doc. 79-34645 Filed 11-08-79; 8.45 am]

BILLING CODE 6450-01-M

Whelan's Exxon, Petersburg, Va.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Whelan's Exxon Service Station, 1900 S. Sycamore Street, Petersburg, Virginia, 23805, on September 28, 1979.

This Proposed Remedial Order charges Whelan's Exxon with selling all grades of gasoline in excess of the maximum lawful selling price for those grades of gasoline in violation of 10 CFR 212.93. It was determined that Whelan's Exxon violated the Federal Energy Pricing Guidelines by selling above the maximum lawful selling price in the amounts of 3.8¢ per gallon for Regular Leaded; 3.7¢ for Premium Leaded and 3.7¢ for Regular Unleaded.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, Southeast District, Office of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia, 30309, Phone: (404) 881-2661. Within 15 days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia, on the 1st day of November, 1979.

James C. Easterday,

District Manager.

[FR Doc. 79-34644 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

Applications for Amendment to Import Authorizations To Provide for Increase in Border Price of Gas Imported From Canada, Invitation To Submit Petitions To Intervene, and Interim Order Authorizing Importation of Natural Gas at Newly Established Canadian Border Price

In the matter of Midwestern Gas Transmission Company (ERA Docket No. 79-23-NG; FERC Docket Nos. G-18314, CP66-121, CP70-25 and CP77-458), Great Lakes Gas Transimission Company (ERA Docket No. 79-25-NG; FERC Docket Nos. CP68-110 *et al.*, CP70-19 *et al.*, CP70-100 and CP71-222 *et al.*), Michigan Wisconsin Pipe Line Company (ERA Docket No. 79-26-NG; FERC Docket No. CP70-22), Montana Power Company, (ERA Docket No. 79-27-NG; FERC Docket No. CP74-187), Northwest Pipeline Corp. (ERA Docket No. 79-28-NG; FERC Docket Nos. CP75-341 and CP75-342), and Inter-City Minnesota Pipelines Ltd., Inc. (ERA Docket No. 79-29-NG; FERC Docket No. CP70-289): Notice of applications for amendment to import authorizations to provide for increase in border price of gas imported from Canada, invitation to submit petitions to intervene, and interim order authorizing the importation of natural gas at the newly established Canadian border price.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the above captioned Applications to amend current import authorizations to increase the established U.S.A.-Canadian border export price of $2.80 per MMBtu ($2.61 per gigajoule). On October 4, 1979, the Privy Council of the Government of Canada set the price, effective November 3, 1979, for gas exported from Canada under existing import licenses at $3.45 per MMBtu ($3.22 per gigajoule), except under License GL-29 where the new price is set at $3.15 (for further details, see Application of Inter-City Minnesota Pipelines Ltd., Inc., ERA Docket No. 79-29-NG).

DATES: Petitions to Intervene: to be filed on or before November 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Finn K. Neilsen, Director, Import/Export Division Office of Petroleum Operations, Economic Regulatory Administration, 2000 M Street, NW., Room 4126, Washington, D.C. 20461, telephone (202) 254-8202.

Mr. Martin S. Kaufman, Office of General Counsel, 12th and Pennsylvania Avenue, NW., Room 5116, Federal Building, Washington, D.C. 20461, telephone (202) 633-9380.

SUPPLEMENTARY INFORMATION: Because the Privy Council Order provided one month's notice prior to implementation of the new price, applicants were precluded from making application to ERA of the DOE 30 days before the implementation, as is required under the procedures established in 18 CFR Part 153.

Upon consideration of the Applicants' pleadings, ERA believes that the public interest is best served by permitting the continued importation of natural gas from Canada under existing authorizations at the increased price. Cessation of delivery of all or any part of the existing flow of Canadian gas would jeopardize those customers served by gas distribution utilities totally or substantially dependent upon imported Canadian gas.

Consequently, ERA is isssuing an Interim Order to permit petitioners to continue to import the previously authorized volumes of natural gas from

Canada at the increased price of $3.45 per MMBtu ($3.15 under license GL-29), pending final findings of fact after conclusion of the comment period. The Interim Order is appended to this Notice.

Other information: The ERA invites petitions for intervention in these proceedings. Such petitions are to be filed with the Economic Regulatory Administration, Room 4126, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on November 21, 1979.

Any person wishing to become a party to these proceedings or to participate as a party in any hearing which may be convened therein must file a petition to intervene. Any person desiring to make any protest with reference to the petitions should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is required, due notice will be given.

Copies of Applicants' petitions are available for public inspection and copying in Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on November 2, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Interim Order Authorizing the Importation of Natural Gas at the Newly Established Canadian Border Price

Midwestern Gas Transmission Company [ERA Docket No. 79-23-NG (FERC Docket Nos. G-18314, CP66-121, CP70-25 and CP77-458)]

Great Lakes Gas Transmission Company [ERA Docket No. 79-25-NG (FERC Docket Nos. CP66-110 *et al.*, CP70-19 *et al.*, CP70-100 and CP71-222, *et al.*)]

Michigan Wisconsin Pipe Line Company [ERA Docket No. 79-26-NG (FERC Docket No. CP70-22)]

Montana Power Company [ERA Docket No. 79-27-NG (FERC Docket No. CP74-187)]

Northwest Pipeline Corp. [ERA Docket No. 79-28-NG (FERC Docket Nos. CP75-341 and CP75-342)]

Inter-City Minnesota Pipelines Ltd., Inc. [ERA Docket No. 79-29-NG (FERC Docket No. CP70-289)]

A. *Background*

The Canadian National Energy Board (NEB) has, since 1974, periodically conducted review of the price of natural gas exported from Canada and has made recommendations to the Canadian government for changes in that price. The last increase in 1979, effective August 11, 1979, was granted to Applicants by ERA's Interim Order Authorizing the Importation of Natural Gas at the Newly Established Canadian Border Price issued August 10, 1979, and followed by ERA's Final Order Authorizing the Importation of Natural Gas at the Newly Established Canadian Border Price issued October 5, 1979.

Taking into account the increase of the actual official ceiling prices for imported crude oil as established by the Organization of Petroleum Exporting Countries, the Canadian Government issued on October 4, 1979, an order increasing, effective November 3, 1979, the established Canadian border export price of $2.60 per MMBtu ($2.61 per gigajoule) to $3.45 per MMBtu (3.22 per gigajoule) under all licenses except GL-29 of Inter-City Minnesota Pipelines Ltd., Inc. The export price for gas exported under License GL-29 is increased to $3.15 per MMBtu.

B. *Discussion*

After receiving notification of the Canadian Privy Council Order, some importers of natural gas affected by the price change filed requests for amendments of existing import authorizations to reflect the new border price. Because the Privy Council Order provided only one month's notice prior to implementation of the new price, the Applicants were precluded from making application to ERA 30 days before the implementation, as is required under the procedures established in 18 CFR Part 153.

Upon consideration of the Applicants' pleadings, ERA believes that the public interest is best served by permitting the continued importation of natural gas from Canada under existing authorizations, at the increased price. Cessation of delivery of all or any part of the existing flow of Canadian gas would jeopardize those customers served by gas distribution utilities totally or substantially dependent upon imported Canadian gas.

C. *Findings*

Based on the information filed with the applications, ERA finds:

1. Previous authorizations issued to Midwestern, Great Lakes, Northwest Pipeline, Montana, Inter-City, and Michigan-Wisconsin should temporarily be amended to permit Applicants to continue to import natural gas from Canada at currently authorized volumes at a price of $3.45 ($3.15 under License GL-29) effective November 3, 1979, as hereinafter ordered and conditioned, as the continued importation has been shown to be not inconsistent with the public interest.

2. ERA is withholding final consideration of these applications pending the receipt of comments and petitions for intervention following the close of the period for receiving comments and interventions pursuant to the notice of applications published today in the Federal Register.

Therefore, ERA orders:

Pursuant to the authority under Section 3 of the Natural Gas Act, import authorizations previously granted to:

Midwestern Gas Transmission Company—ERA 79-17-NG

Great Lakes Gas Transmission Company—ERA 79-18-NG

Northwest Pipeline Corp.—ERA 79-22-NG

Montana Power Company—ERA 79-19—NG

Michigan Wisconsin Pipe Line Company—ERA 79-20-NG

Inter-City Minnesota Pipelines Ltd., Inc., Under Licenses GL-28 and GL-30—ERA 79-21-NG

for the importation of natural gas from Canada are hereby temporarily amended to permit the import of previously authorized volumes of natural gas from Canada at a price of $3.45 per MMBtu ($3.22 per gigajoule) effective November 3, 1979, pending final findings of fact. The new border price for gas to be imported under license GL-29 of Inter-City Minnesota Pipelines Ltd., Inc., is $3.15 effective November 3, 1979.

This interim authority to purchase natural gas imported from Canada affects only the price to be paid, and in no manner changes any other condition imposed in the respective existing authorizations to import issued to each Applicant.

Issued in Washington, D.C., on November 2, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-34764 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP79-12]

El Paso Natural Gas; Notice of Motion

October 31, 1979.

Take notice that on October 17, 1979, El Paso Natural Gas Company (El Paso), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso, Texas 79978, filed with the Federal Energy Regulatory Commission (Commission) at Docket No. RP79-12, pursuant to § 1.12 of the Commission's Rules of Practice and Procedure, a motion requesting that the Commission grant advance approval of certain procedures designed to facilitate negotiations to extend El Paso's existing rate settlement agreement in Docket No. RP79-12, approved June 20, 1979, all as more fully set forth in the motion for advance approval on file with the Commission and open to public inspection.

The motion states that despite the indefinite duration of most of the provisions of the Docket No. RP79-12 settlement, the limited duration of Article X (Gas Well Royalty and Production Tax Costs Variations), together with certain other technical provisions of the settlement, will require as a practical matter that El Paso file a major system-wide change in rates to be effective no later than June 1, 1980. In an effort to avoid the necessity of effectuating a major rate increase by June 1, 1980, El Paso proposes to initiate negotiations later this year with its customers, the Commission Staff, and interested State commissions for the purpose of reaching an agreement to extend El Paso's existing rate settlement agreement at Docket No. RP79-12. El Paso would delay making its rate increase filing until the end of December. If by the end of December, the Commission has issued an order satisfactory to all parties approving the agreement extending the Docket No. RP79-12 Stipulation and Agreement, El Paso would dispense with filing a major rate increase. If on the other hand, such an order has not issued by the end of December, El Paso would, as a protective measure, file its rate increase on a conditional basis, with the filing to be withdrawn in the event of the issuance of such an order.

To enable El Paso to delay filing its next major rate increase until December 31, 1979, but to nevertheless effectuate that increase by June 1, 1980, El Paso requests that the Commission issue an order granting advance approval for a four-month suspension period applicable to such rate filing. In absence of the shortened suspension period requested herein, El Paso will be required to file its next major rate increase by no later than November 30, 1979, in order to be assured of an effective date no later than June 1, 1980. For this reason El Paso requests that the Commission approve the instant motion at an early date—preferably by November 28, 1979.

Any party or staff counsel desiring to object to or answer El Paso's motion should, on or before November 9, 1979, file with the Federal Regulatory Commission, Washington, D.C. 20426, an objection pursuant to 18 CFR 1.12(c). All objections filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 79-34668 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-7]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

November 2, 1979.

Take notice that Kentucky West Virginia Gas Company (Kentucky West), on October 29, 1979, tendered for filing its First Revised Sheet No. 5, First Revised Sheet No. 9, Second Revised Sheet No. 24, and Eleventh Revised Shet No. 27 of its FERC Gas Tariff, First Revised Volume No. 1, containing proposed rates which would increase revenues from jurisdictional sales and service by approximately $5.2 million. The proposed increase is based on the twelve-month period ended June 30, 1979, adjusted for known and measurable changes which will occur within nine months subsequent to that date, as provided in the Commission's Regulations.

Kentucky West requested a waiver of notice and proposes that the tariff sheets becoming effective on November 1, 1979, Kentucky West states, that in accordance with § 154.38(d)(vi)(a) of the Commission's Regulations, this filing will automatically be subject to refund concurrent with the effectiveness of the tariff sheets.

In the event that the Commission does not waive notice to permit the proposed tariff sheets to become effective on November 1, 1979, as an alternative, Kentucky West tendered its Substitute Tenth Revised Sheet No. 27, and requests that it be accepted in compliance with the Commission's order issued September 12, 1979 in Docket No. RP76-93, and that it become effective until superseded by Eleventh Revised Sheet No. 27.

Copies of Kentucky West's filing have been served on Kentucky West's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 19, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34696 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA80-3]

M. H. Marr; Notice of Application for Adjustment

October 31, 1979.

On October 5, 1979, M. H. Marr (Applicant) filed with the Federal Energy Regulatory Commission an Application for an Adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), wherein the Applicant seeks relief from the maximum lawful pricing provisions of the NGPA.

Applicant states that he owns a working interest in the Shell Oil Company (Shell) Ridgway Management Unit located in the Southwest Piney Woods Field, Rankin County, Mississippi. Natural gas is produced by the Shell Ridgway Management Unit Well No. 1-R (Well No. 1-R). The Applicant states that while Well No. 1-R was spudded prior to February 19, 1977, it did not reach total depth or go into production until after February 19, 1977. Because of the substantial costs that Applicant asserts he has incurred in connection with Well No. 1-R and the well which it replaced, the Applicant requests that the natural gas produced from this well be classified as "High Cost Natural Gas" within the meaning of section 107 of the NGPA and that price controls applicable thereto be eliminated pursuant to section 121(b) of the NGPA.

The procedures applicable to the conduct of the adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before November 26, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34689 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP80-6]

National Fuel Gas Supply Corp.; Notice of Proposed Change in Tariff

October 31, 1979.

Take notice that on October 25, 1979 National Fuel Gas Supply Corporation ("National Fuel"), 10 Lafayette Square, Buffalo, New York 14240, tendered for filing Second Revised Sheet No. 22 to its FERC Gas Tariff, Original Volume No. 1, superseding First Revised Sheet No. 22. National Fuel states that the purpose of this filing is to change the interest rate on late payments by customers of monthly bills to conform to the interest rate specified in § 154.67 of the Commission's Regulations under the Natural Gas Act.

National Fuel states that since the prime rate has escalated to well over the 7 percent rate presently provided in National Fuel's tariff for customers' late payments of bills, National Fuel has noticed that certain of its customers are paying their bills late. National Fuel states that it is concerned that as the prime rate continues to rise the number of customers paying late will continue to increase. The company states that raising the 7 percent interest rate to the level of the prime rate, as provided in § 154.67 of the Commission's Regulations, will discourage customers delaying payment of their bills.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 16, 1979 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34690 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Dockets Nos. RP71-107 and RP72-127]

Northern Natural Gas Co.; Purchased Gas Cost Adjustment Rate Change

October 31, 1979.

Take notice that on October 26, 1979, Northern Natural Gas Company (Northern) tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Third Revised Volume No. 1

Twenty-first Revised Sheet No. 4a
Eleventh Revised Sheet No. 4b

Original Volume No. 2

Twenty-first Revised Sheet No. 1c

Such revised tariff sheets are required in order that Northern may place into effect the proposed rates on December 27, 1979 to reflect:

(1) The estimated increase in the cost of purchased gas pursuant to Paragraph 18 or Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1. Additionally, this PGA reflects the flow-through of certain refund obligations pursuant to Commission Orders in Docket Nos. RP77-56, RP78-56;

(2) The increase in Northern's costs associated with Research and Development Expenditures;

(3) The increase in Gas Research Institute unit charge pursuant to Paragraph 19 of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1;

(4) The estimated decrease in Louisiana First Use Tax surcharge pursuant to Paragraph 20 of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1; and

(5) Elimination of the NI-Gas refund which terminates on December 26, 1979.

The Company states that copies of the filing have been mailed to each of the Gas Utility customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before November 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34691 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-46]

Public Service Co. of New Mexico; Notice of Agreement

October 31, 1979.

The filing Company submits the following:

Take notice that Public Service Company of New Mexico (PNM) on October 25, 1979, tendered for filing an amendment to the Power Transmission Agreement between PNM and Department of Energy Los Alamos (DOE).

PNM states that the service to be provided is a change in the Contract Reserved Demand, and a change in the rate for such service for DOE. The services provided to DOE from PNM's West Mesa Switching Station in Los Alamos, New Mexico, and enables DOE to receive its allocation of power and energy from the Western Area Power Administration. The change in service and rates was agreed to commence on October 1, 1979, subject to the Federal Energy Regulatory Commission's approval. PNM has therefore requested a waiver of notice requirements. The rate change is identical with PNM's presently approved FERC Rate Schedule 31, Supplement No. 5. Copies of the filing have been mailed to DOE and the New Mexico Public Service Commission.

Any person desiring to protest that application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions and protests should be filed on or before November 23, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34692 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2963]

City of Seguin, Tex.; Application for Short-Form License (Minor)

October 31, 1979.

Take notice that on August 28, 1979, the City of Seguin (City), Texas, filed an application for license [pursuant to the Federal Power Act, 16 USC, Section 791(a)–825(r)] for redevelopment of an existing operating water power project known as the Max Starcke Project, located on the Guadalupe River, Guadalupe County, near the City of Seguin, Texas. Correspondence with the Applicant should be directed to the following person: Mr. Alfred H. Koebig, Mayor of Seguin, Post Office Box 591, Seguin, Texas 78155.

Purpose of the Project—Project power is and would be used in the City's municipal utility system.

Project Description—The proposed project would consist of: (1) The existing rock and concrete dam, approximately 10 feet high, 240 feet long, and 40 feet wide, forming; (2) A reservoir having a surface area of 60 acres and a storage capacity of 425 acre-feet at normal water surface elevation of 466.5 feet msl; (3) An existing powerhouse requiring extensive modification which would contain; (4) An existing 250-kW and two new 250-kW vertical shaft open flume propeller-type units; and (5) Appurtenant facilities.

The projected annual power generation would be 1.7 million kWh during the early years of operation, dropping to 1.6 million kWh as water is diverted from the river at other existing hydroelectric dams upstream. The project is a run-of-the-river operation.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Protests, and Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1978).

In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protest, petition to intervene, or agency comments must be filed on or before January 7, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C., 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-34633 Filed 11-8-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2941]

S. D. Warren Co.; Application for Short-Form License (Minor) for a Constructed Project

October 31, 1979.

Take notice that on August 14, 1979, S. D. Warren Company filed an application for license [purusant to the Federal Power Act, 16 USC, Section 791(a)—825(r)] for an existing water power project known as the Little Falls Project, FERC Project No. 2941, located on the Presumpscot River, a navigable waterway of the United States, near Gorham and Windham, in Cumberland County, Maine.

Correspondence with the Applicant should be directed to the following persons: Mr. William H. Marra, Vice President, S. D. Warren Company, 225 Franklin Street, Boston, Massachusetts 02101; Mr. John B. Blatz III, Associate Counsel, Scott Paper Company, Scott Plaza Two, Philadelpia, Pennsylvania 19113; and Mr. Bernard A. Foster III or Ms. Nancy J. Hubbard, Ross, Marsh & Foster, 730 15th Street, N. W., Washington, D.C. 20005.

Purpose of the Project—Project energy is used by the Applicant in the operation of its Westbrook paper plant. Applicant states that because of the urban setting, industrial and commercial use of the land at the project, high population density, and the limited availability of open space, recreational opportunities are minimal. The project was constructed in the early 1900's.

Project Description—The existing project consists of: (1) A 12-foot-high, 200-foot-long concrete spillway dam with a crest elevation of 110.50 feet m.s.l.; (2) A wastegate structure; (3) A 100-foot-long stone sluiceway dam located at a right angle to the spillway dam, containing three sluice gates; (4) A powerhouse at a right angle and adjacent to the spillway dam with an installed capacity of 1000-kW; and (5) Appurtenant facilities. The annual generation for the project averages 6,800,000 kWh which represents about 4% of the Westbrook paper plant's electric energy requirements. The project is a run-of-the-river operation.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If any agency does not file comments within the time set below, it will be presumed to have no comments.

Protests, and Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protest, petition to intervene, or agency comments must be filed on or before January 7, 1979. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C., 20426.

The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-34692 Filed 11-8-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. G-11122, et al.]

Sun Oil Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

November 2, 1979.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-11122 (G-11174),[1] 7/24/78	Sun Oil Company, P.O. Box 20, Dallas, Texas 75211.	Colorado Interstate Gas Company, Laverne Field, Harper County, Oklahoma.	(2)	14.65
CI62-1388, C, 9/7/78	Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Northern Natural Gas Company, Mocane-Laverne Field, Harper County, Oklahoma.	(2)	14.65
CI67-152, C, 8/17/78	Sun Oil Company	Panhandle Eastern Pipe Line Company, Peek South Field, Ellis County, Oklahoma.	(2)	14.65
CI77-24, C, 8/25/78	Champlin Petroleum Company, P.O. Box 1257, Englewood, Colorado 80150.	Panhandle Eastern Pipe Line Company, Wattenberg Area, Weld *et al.* Counties, Colorado.	(2)	15.025
CI78-370, C, 9/5/78	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	El Paso Natural Gas Company, Amacker Tippett Field, Upton County, Texas.	(2)	14.65

[1] Sun is filing to continue the sale of its own interest in the Kinney No. 1 Well previously covered by the Operator Gulf Oil Corporation, under a certificate issued in Docket No. G-11174.
[2] Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770, as amended.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 79-34697 Filed 11-8-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RP72-41 (PGA 80-1)]

Western Transmission Corp.; Proposed Changes

October 31, 1979.

Take notice that Western Transmission Corporation (Western), on Oct. 26, 1979, tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, the following sheet:

Twelfth Revised Sheet No. 3-A, superseding Eleventh Revised Sheet No. 3-A.

The proposed changes would increase the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of Section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is December 1, 1979.

Copies of this filing have been served upon Colorado Interstate Gas Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before November 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR. Doc. 79-34695 Filed 11-8-79; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1355-5; PF-155]

Pesticide Programs; Filing of Pesticide, Food, and Feed Additive Petitions

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA or the Agency).

ACTION: Notice of filing.

SUPPLEMENTARY INFORMATION: EPA gives notice that Chevron Chemical Co.,

940 Hensley St. Richmond, CA 94804, has submitted the following petitions for consideration.

PP 9F2265. Proposes that 40 CFR 180.226 be amended by establishing tolerances for residues of the herbicide diquat [6, 7-dihydrodipyrido (1,2-a: 2',1'-c) pyrazinediium] derived from the application of the dibromide salt and calculated as the cation in or on the following raw agricultural commodities:

Commodity and Part(s) Per Million (ppm)	
Eggs	0.01
Milk	0.01
Meat, fat and meat byproducts of poultry	0.01
Meat, fat and meat byproducts of cattle, goats, hogs, horses, and sheep	0.02
Potatoes	0.10

The proposed analytical method for determining residues is high pressure liquid chromatography (HPLC) and spectrophotometry.

FAP 9H5239. Proposes that 21 CFR 193.160 be amended by permitting residues of the herbicide diquat in or on the food commodity processed potatoes (includes potato chips) at 0.2 ppm.

FAP 9H5239. Proposes that 21 CFR 561 be amended by permitting the residues of the herbicide diquat in or on the animal feed processed, dried potato waste at 1.0 ppm.

COMMENTS/INQUIRIES: Comments may be submitted, and inquiries directed, to Product Manager (PM) 23, Ms. Willa Garner, Room E-351 Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, telephone number 202/755-1397. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's Office from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Secs. 408(d)(1) and 409(b)(5) (21 U.S.C. 346a and 348 respectively), Federal Food, Drug, and Cosmetic Act)

Dated: November 2, 1979.

Herbert S. Harrison,

Acting Director, Registration Division.

[FR Doc. 79-34699 Filed 11-8-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-C31033; FRL 1355-6]

Receipt of Application To Conditionally Register Pesticide Product Entailing a Changed Use Pattern

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA or the Agency).

ACTION: Notice of receipt of application.

SUPPLEMENTARY INFORMATION: Sungro Chemicals Inc., PO Box 24632, Los Angeles, CA 90024, has submitted to EPA an application to conditionally register the pesticide product Killer-For Ice Plant Weeds (EPA File Symbol 11474-EI) containing 20.4% of the active ingredient magnesium chloride. The application received from Sungro Chemicals, Inc. proposes that the use pattern of this pesticide be changed from use as a bacteriostatic treatment for textiles, plastic, leather, paper, and rubber materials to include outdoor application to control weeds on the ground cover, ice plants. The application also proposes that the product be classified for general use.

Notice of approval or denial of this application to register Killer-For Ice Plant Weeds will be announced in the Federal Register. Except for such material protected by section 10 of the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved. Notice of receipt of this application does not indicate a decision by the Agency on the application.

COMMENTS/INQUIRIES: Interested persons are invited to submit written comments on this application. Comments may be submitted, and inquiries directed, to Product Manager (PM) 23, Dr. Willa Garner, Room E-351, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, telephone number 202/755-1397.

The comments must be received on or before December 10, 1979, and should bear a notation indicating the EPA File Symbol "11474-EI". Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. The label furnished by Sungro Chemicals Inc., as well as all written comments filed in connection with this notice, will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Section 3(c)(4), FIFRA and 40 CFR 162.)

Dated: November 2, 1979.

Herbert S. Harrison,

Acting Director, Registration Division.

[FR Doc. 79-34679 Filed 11-8-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1355-7]

Notice of Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104) U.S. Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements (EISs) which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of October 29 to November 2, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from November 9, 1979 and will end on December 24, 1979. The 30-day review period for final EIS's as calculated from November 9, 1979 will end on December 10, 1979.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following sources:

For hard copy reproduction:

Environmental Law Institute, 1346 Connecticut Avenue NW., Washington, DC 20036.

For hard copy reproduction or microfiche:

Information Resources Press, 2100 M Street NW., Suite 316, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 245-3006.

SUMMARY OF NOTICE: On July 30, 1979, the CEQ Regulations became effective. Pursuant to § 1506.10(a), the 30-day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of October 29, 1979 to November 2, 1979 the 30-day review period will be calculated from November 9, 1979. The review period will end on December 10, 1979.

Appendix I sets forth a list of EIS's filed with EPA during the week of October 29, 1979 to November 2, 1979. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this Notice. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets for the EIS's which agencies have granted an extended review period or EPA has approved a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the newly established date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agency.

Appendix V sets forth a list of reports or additional supplemental information relating to previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets for official corrections which have been called to EPA's attention.

Dated: November 6, 1979.

William D. Dickerson,

Acting Director, Office of Environmental Review (A-104).

Appendix I—EIS's Filed With EPA During the Week of October 29 to November 2, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A, Admin. Building, Washington, D.C. 20250, (202) 447-3965.

Forest Service

Draft

Manistee Wild and Scenic River Study, several counties in Michigan, Oct. 31: Proposed is the inclusion of 188 miles of the Manistee River in the National Wild and Scenic Rivers System. The river segments proposed for inclusion are located in the Counties of Crawford, Kalkaska, Missaukee, Wexford, Manistee, Lake and Osceola, Michigan. The river is divided into four segments and classified as follows: (1) One segment 33 miles in length to be classified as recreational, and (2) three segments totaling 155 miles to be classified as scenic. Approximately 72 miles of the qualified segments lie within the Manistee National Forest. (EIS order No. 91121.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.

Draft

Sacramento River Deep Water Ship Channel, several Counties in Calif., Oct. 29: Proposed is the deepening and widening of the existing Suisun Bay and Sacramento River deep waters channels located in the Counties of Yolo, Sacramento, Solano and Contra Costa, California. The channels would be dredged to between 250 to 400 feet in width and between 30 to 35 feet in depth. Approximately 3,980 acres of land would be required for the disposal of dredged material. The plan will also include: 1) Supplementing of the existing water quality monitoring network, 2) construction of a submerged sill if needed, and 3) recreational facilities. (Sacramento District) (EIS order No. 91115.)

Spinney Mtn Reservoir, Pike NF, Permits, Park County, Colo., Nov. 2: Proposed is the issuance of permits from both the COE and the DOI/BLM for the construction of the Spinney Mountain Reservoir. The reservoir would be located on the South Platte River within the Pike National Forest, Park County, Colorado. The purpose of the dam would be to store both east slope runoff waters and west slope diversion waters from the homestake system to meet the water demands for the city of Aurora during droughts, emergency outages of the western slope conveyance system, or in periods which development of new water supplies has not kept pace with demand. (Omaha District) (EIS order No. 91130.)

Final

Port Ontario, Harbor of Refuge, Mexico Bay, Oswego County, N.Y., Oct. 31: Proposed is a harbor of refuge plan for Port Ontario in the Mexican Bay, Oswego County, New York. The plan will include: 1) a south breakwater about 1,450 feet long, 2) a north breakwater about 350 ft. in length, 3) dredging of the lake entrance channel to eight feet below lwd where necessary, 4) dredging of a short river channel, and 5) boating facilities. Seven alternate plans are considered. The COE filed a draft EIS, No. 80229, Dated 3-9-78 which was replaced by a revised draft EIS, No. 90111, filed 1-30-79. (Buffalo district) Comments made by: HUD, HEW, DOC, DOI, EPA, State agencies, individuals. (EIS order No. 91122.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.

National Oceanic and Atmospheric Administration

Draft

North Pacific, Bering-Chukchi Sea Herring FMP, Pacific Ocean, Nov. 2: Proposed is the implementation of the Fishery Management Plan for the herring fishery of the North Pacific Bering-Chukchi Sea. The FMP would: 1) implement a conservation regime until adequate biological data and analyses are available, 2) promote full utilization of the herring resources by the domestic fisheries, 3) maximize the economic value of the harvest taken by the domestic commercial fisheries, 4) ensure that the needs of subsistence users are met, and 5) promote coordination between state and federal management of the resource. (EIS order No. 91128.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: EPA Library MD-35, Research Triangle Park, North Carolina 27711, (919) 541-2777.

Draft

Auto/Light-Duty Truck Surface Coating Operations, Regulatory, Oct. 29: Proposed are standards of performance for automobile and light-duty truck surface coating operations under section III of the Clean Air Act. The standards would limit emissions of volatile organic compounds from new, modified, and reconstructed facilities. Numerical emission limits for each "affected facility" have been selected as follows: 1) 0.10 kg of VOC per liter of applied coating solids from each prime coat operation, 2) 0.84 kg of VOC per liter of applied coating solids from each guide coat operation, and 3) 0.84 kg of VOC per liter of applied coating solids from each top-coat operation. (EPA-450/3-79-030) (EIS order No. 91113.)

Contact: Mr. Wallace Stickney, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203, (212) 223-4635.

Final

Boston Area, Waste Treatment Management Plan, Suffolk County, Mass., Nov. 2: Proposed is the Water Quality

Management Plan for the Metropolitan Area Planning Commission. Principle effects of the proposed action are: 1) improved water quality in the surface waters of the region, 2) increased recreation and improved commercial shellfish industry, and 3) improvement and protection of regional groundwater supply. Five alternatives are considered which include: 1) method of treatment, 2) methods of treatment and disposal, 3) non-extension of sewer systems, 4) stormwater and combined sewer discharges, and 5) land development controls. Comments made by: EPA, DOI, State and local agencies, groups, individuals and businesses (EIS order No. 91126.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-6306.

Draft

Old Farm, Homestead, Briargate, and Norwood, El Paso County, Colo., October 29: Proposed is the issuance of HUD home mortgage insurance for the Old Farm, Homestead, Briargate, and Norwood planned developments in Colorado Springs, El Paso County, Colorado. The developments would consist of 1,240, 3,301, 3,561 and 7,475 dwelling units respectively. Other land uses will include commercial, school, and park (HUD-ROB-EIS-79-XVID). (EIS Order No. 91116.)

Section 104(h)

The following are Community Development Block Grant statements prepared and circulated directly by applicants pursuant to section 104 (h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Draft

St. Johns Riverfront Development (UDAG), Multnomah County, Oreg. October 30: Proposed is the awarding of a UDA grant for the residential and recreational development of 98 acres of waterfront property on the Willamette River in the St. Johns district of the city of Portland, Multnomah County, Oregon. Major features of the project will include: Utility and street improvements, relocation assistance to on-site residents and businesses, development of a greenway trail system, four public parks, land disposition for the construction of 630 residential dwellings, two restaurants, and a public marina. (EIS Order No. 91120.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

Draft

Abandoned Mine Land Reclamation, SMCRA, Programmatic Policy, October 31: Proposed is the implementation of program policies for Federal, State, and Indian abandoned mine land reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977. The program would provide the authority to use moneys from this fund to reclaim and restore land and water resources adversely affected by past coal mining. The alternatives considered for the two program elements were: 1) Federal discretionary fund allocation, and 2) Abandoned mine land reclamation guidelines (DES-OSM-EIS-2). (EIS Order No. 91123.)

Final Supplement

Phosphate Leasing, Osceola National Forest (FS-1), Several counties, Fla., October 31: This statement supplements a final EIS filed with CEQ on June 28, 1974 (EIS No. 41065, USDI-FES-74-37). The Proposed Action is the issuance of 41 phosphate preference right leases on 52,000 acres of the Osceola National Forest located in north central Florida. The scope of this supplement is limited to only those impacts, alternatives and new issues that have surfaced since 1974. A new alternative discusses the issuance of leases providing for two beneficiation plants in the Osceola National Forest (FES-79-57). Comments made by: DOI, USDA, COE, EPA, State and local agencies, groups, individuals and businesses. (EIS Order No. 91124.)

OHIO RIVER BASIN COMMISSION

Contact: Mr. I. Bernstein, Ohio River Basin Commission, Suite 208-20, 36 East Fourth Street, Cincinnati, Ohio 45202, (513) 684-3831.

Draft

Big Sandy/Guyandotte River Basins Resources Plan, Kentucky, West Virginia, November 2: Proposed is a regional water and land resources plan for the Big Sandy/Guyandotte River Basins in Kentucky and West Virginia. The basins areas encompass approximately 5,929 square miles. The recommended plan consists of 117 projects including: 1) Six USDA/SCS watershed projects, 2) Eight COE local protection projects, 3) Five state water supply projects, 4) 41 wastewater treatment plants, 5) 15 modifications to existing treatment facilities, and 6) 41 flood insurance studies. Also included in the plan are a number of programs and special studies. (EIS Order No. 91129.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Draft

CA-85, Protection or Abandonment, Santa Clara County, Calif., November 2: Proposed is the protection or abandonment of the unconstructed CA-85 corridor begins at CA-101, Monterey Road and terminates at Stevens Creek Boulevard. The alternatives include: 1) Purchase right-of-way to protect the CA-85 corridor from impending housing and other types of development, and 2) abandon the corridor and sell the existing state owned right-of-way. (FHWA-CA-EIS-79-05-D) (EIS Order No. 91127.)

Final

I-275/US 19, Sunshine Highway, Manatee, Hillsborough, and Pinellas Counties, Fla., November 2: Proposed is the upgrading of the Sunshine Skyway Causeway and bridges to standards acceptable for the interstate system beginning 0.5 miles east of the southern toll plaza in Manatee County northward to the vicinity of the north toll plaza, a distance of approximately 10.7 miles. The Sunshine Skyway (US 19), a four-lane divided toll facility, would be upgraded as a part of I-275 by widening and replacing bridges, limiting access, constructing interchanges, providing frontage roads and upgrading the present rest areas to interstate type rest area facilities. Comments made by: DOT, DOC, EPA, USDA, HEW, DOI, State and local agencies. (EIS Order No. 91131.)

Final

ID-3, St. Maries to Harrison Junction, Benewah and Kootenai Counties, Idaho, October 30: The proposal considers the improvement and/or relocation of ID-3 between St. Maries in Benewah County and Harrison Junction in Kootenai County, Idaho. Also considered is the improvement of ID-5 from the city of St. Maries approximately 4 miles westward. The length of the project varies from 9.5 to 11 miles with the alternative chosen. The project will be divided into urban and rural sections which will vary in the number of travel lanes, width, right-of-way and other facilities. (FHWA-IDA-EIS-78-01-F.) Comments made by: DOI, DOT, USDA, COE, State and local agencies groups and individuals. (EIS Order No. 91119.)

Saginaw River Birdge Study, Bay City, Bay County, Mich., October 30: Proposed is the construction of a new bridge across the Saginaw River in Bay City, Bay County, Michigan. The improvements range from functional replacement of the old two-lane bridge at Third Street to the construction of either a two-lane or four-lane bridge at a new location. Relocation facilities include necessary bridge approaches and the construction of an arterial at-grade type facility from both the west and east bridge approaches. The total length of the project is approximately two miles and will require some new right-of-way. (FHWA-MI—EIS-78-03-F.) Comments made by: DOC, EPA, DOI, COE, AHP, local agencies, groups and businesses. (EIS Order No. 91118.)

WA-20 (F.H. 35), Bacon Creek to East Boundary, Whatcom and Skagit Counties, Wash., November 2: Proposed is the reconstruction of a portion of WA-20 (also known as the North Cascade Highway and WA Forest Highway 32) from Bacon Creek to East Boundary within the North Cascades National Park, Ross Lake National Recreation Area, Whatcom and Skagit Counties, Washington. The project length is approximately 28.65 miles with construction following the existing alignment with only minor exceptions. The highway will be a two-lane, paved road and used for predominately recreational travel. The DOT filed a draft EIS, #71005, Dated 8/17/77, which was replaced by a revised draft statement, #81341, filed 12-18-79. (FHWA-WAFP-EIS-77-02-F.) Comments made by: USDA, COE, FERC,

EPA, DOE, AHP, State and local agencies, businesses. (EIS Order No. 91125.)

Final

12th Street widening/extension, city of Cayce, Lexington County, S.C., October 29: Proposed is the widening and extension of 12th Street located in the city of Cayce, Lexington County, South Carolina. The project involves the upgrading of an existing four-lane portion of 12th Street and extending on new location to the southern beltway for a distance of approximately 3.7 miles. Four alternatives were considered in addition to no action. Two main location alignments were considered, each having a secondary alignment. (FHWA-SCS-EIS-77-04-F). (EIS Order No. 91117.)

Draft Supplement

Rail Relocation/Consolidation, Lincoln (DS-2), Lancaster County, Nebr., October 29: This statement supplements a draft EIS, #70936, filed 8-2-77 and a draft supplement, #81159, filed 10-24-78. Proposed is a rail relocation and consolidation project for the city of Lincoln, Lancaster County, Nebraska. The alternatives consider no action and three relocation alternates. The three relocation alternates would provide a modified location for the corridor B crossing of Salt Creek south of the throat of the Burlington Northern (BN) yard. These alternatives would also commit BN to the use of this crossing for the movement of western coal. (FHWA-NEB-EIS-77-04-D-DS-2). (EIS Order No. 91114.)

EIS's Filed During the Week of Oct. 31 to Nov. 2, 1979

[Statement title index—by State and county]

State	County	Status	Statement title	Accession No.	Date filed	Original agency No.
South Carolina	Lexington	Draft	Abandoned Mine Land Reclamation, SMCRA	91123	10-31-79	DOI.
		Draft	12th Street Widening/Extension, City of Cayce	91117	10-29-79	DOT.
California	Several	Draft	Sacramento River Deep Water Ship Channel	91115	10-29-79	COE.
	Santa Clara	Draft	CA-85, Protection or Abandonment	91127	11-02-79	DOT.
Colorado	El Paso	Draft	Old Farm, Homestead, Braingate, and Norwood	91116	10-29-79	HUD.
	Park	Draft	Spinney Mtn. Reservoir, Pike NF, Permits	91130	11-02-79	COE.
Florida	Hillsborough	Final	I-275/US 19, Sunshine Highway	91131	11-02-79	DOT.
	Manatee	Final	I-275/US 19, Sunshine Highway	91131	11-02-79	DOT.
	Pinellas	Final	I-275-US 19, Sunshine Highway	91131	11-02-79	DOT.
	Several	Final supp	Phosphate Leasing, Osceola National Forest (FS-1).	91124	10-31-79	DOI.
Idaho	Benewah	Final	ID-3, St. Maries to Harrison Junction	91119	10-30-79	DOT
	Kootenai	Final	ID-3, St. Maries to Harrison Junction	91119	10-30-79	DOT.
Kentucky		Draft	Big Sandy/Guyandotte River Basins Resources Plan.	91129	11-02-79	ORBC.
Massachusetts		Final	Boston Area, Waste Treatment Management Plan	91126	11-02-79	EPA.
Michigan	Several	Draft	Manistee Wild and Scenic River Study	91121	10-31-79	USDA.
	Bay	Final	Saginaw River Bridge Study, Bay City	91118	10-30-79	DOT.
Nebraska	Lancaster	Supple	Rail Relocation/Consolidation, Lincoln (DS-2)	91114	10-29-79	DOT.
New York	Oswego	Final	Port Ontario, Harbor of Refuge, Mexico Bay	91122	10-31-79	COE.
Oregon	Multnomah	Draft	St. Johns Riverfront Development (UDAG)	91120	10-30-79	HUD.
Pacific Ocean	—	Draft	North Pacific, Bering-Chukchi Sea Herring FMP	91128	11-02-79	DOC.
Regulatory		Draft	Auto/Light-Duty Truck Surface Coating Operations	91113	10-29-79	EPA.
Washington	Skagit	Final	WA-20 (F.H. 35), Bacon Creek to East Boundary	91125	11-02-79	DOT.
	Whatcom	Final	WA-20 (F.H. 35), Bacon Creek to East Boundary	91125	11-02-79	DOT.
West Virginia		Draft	Big Sandy-Guyandotte River Basins Resources Plan.	91129	11-02-79	ORBC.

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed with EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/extension	Date review terminates
U.S. DEPARTMENT OF AGRICULTURE					
Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A, Admin. Building, Washington, D.C. 20250, (202) 447-3965.	Manistee Wild and Scenic River Study.	Draft 91121	Nov. 9, 1979 (see app. I).	Extension	Jan. 24, 1980.
U.S. DEPARTMENT OF AGRICULTURE					
Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.	VA-78 Powhite Parkway Extension.	Final 91079	Oct. 26, 1979	Extension	Dec. 10, 1979.
OHIO RIVER BASIN COMMISSION					
Mr. I. Bernstein, Ohio River Basin Commission, Suite 208-20, 36 East Fourth Street, Cincinnati, Ohio 45202, (513) 684-3831.	Big Sandy/Guyandotte River Basins Water and Land Resources Plan.	Draft 91129	Nov. 9, 1979 (see app. I).	Extension	Jan. 24, 1980.

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/No.	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA*

Federal agency contact	Title of report	Date Made available to EPA	Accession No.
None.			

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
None.				

[FR Doc. 79-34743 Filed 11-8-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL-1352-8]

Dibromochloropropane (DBCP); Suspension Order and Notice of Intent To Cancel

On July 18, 1979, I issued my Notice of Intent to Suspend the registrations of certain pesticide products containing dibromochloropropane ("DBCP"). 44 FR 43335 (July 24, 1979). On October 20, 1979, after an adjudicatory hearing, the presiding officer, Administrative Law Judge Gerald Harwood, issued a recommended decision concerning the allegations contained in the Notice of Intent to Suspend. On October 29, 1979, I issued my Final Decision and Suspension Order. That same day, I also issued, pursuant to FIFRA § 6(b)(1), a Notice of Intent to Cancel.

This part of the Federal Register contains the Recommended Decision, the Final Decision, the Suspension Order, and the Notice of Intent to Cancel.

Dated: November 1, 1979.

Douglas M. Costle,

Administrator.

[FIFRA Docket No. 485]

Intent To Suspend Registrations of Pesticide Products Containing Dibromochloropropane (DBCP)

In re: Notice of Intent to Suspend Registrations of Pesticide Products Containing Dibromochloropropane (DBCP), FIFRA Docket No. 485.

Appearances

Mitchell Bernstein, Lawrence A. Cook, Ellen Siegler, and Michael S. Winer, Environmental Protection Agency, Washington, D.C., for the Respondent, United States Environmental Protection Agency

Musick, Peeler & Garrett, Robert M. Stone, Steven D. Weinstein, Reed E. Shaper, Los Angeles, California, for Amvac Chemical Corporation

Peter Barton Hutt, Clausen Ely, Jr., Charles H. Montange, Washington, D.C., for the Pineapple Growers Association of Hawaii (PGAH) and the State of Hawaii

E. George Pazianos, Washington, D.C., for Gowan Company and Quimica Organica de Mexico, S.A.

Raymond W. Fullerton, Director, Litigation Division, Margaret M. Breinholt, Terrence G. Jackson and Judith Wenker, Office of the General Counsel for the Secretary of Agriculture for the United States, Washington, D.C.

Ralph Lightstone, California Rural Legal Assistance, Sacramento, California, Charles Horwitz, Washington, D.C., and Robert Stulberg, Washington, D.C., for Carlos Amaya, *et al.*, and the National Association of Farmworkers Organizations

Robert K. Phillips, Executive Secretary, National Peach Council, Martinsburg, West Virginia for the National Peach Council

Michael B. Allderdice, Claremont, California, for California Citrus Quality Council as *amicus curiae*

Recommended Decision

Contents

Prior Proceedings.
The Notice of Intent to Suspend.
The Issue of Imminent Hazard.
The Suspension Hearing.
I. The Pesticide Dibromocloropropane.
II. The Risks Presented by DBCP.
A. The Toxicity of DBCP.
1. The Significance of Animal Bioassays In Identifying Human Carcinogens.
2. DBCP is a Potential Human Carcinogen.
3. DBCP Has Harmful Testicular Effects in Males.
4. DBCP is a Genetic Toxin.
5. The Bioassays and Epidemiological Data Have Not Been Shown to be Unreliable.
6. The Quantitative Risk Assessment of Carcinogenicity of DBCP.
B. The Risk of Exposure.
1. The Ambient Air Exposure and Food Residue Studies.
2. The Water Contamination Studies.
3. Conclusion on Risk.
III. The Benefits of DBCP.

A. Peaches.
B. Pineapples.
C. Citrus.
D. Soybeans.
E. Remaining Crops.
IV. The Indicated Benefits and Costs Do Not Outweigh the Risks.
V. Conclusion and Recommended Action.

[FIFRA Docket No 485]

Intent To Suspend Registrations of Pesticide Products Containing Dibromochloropropane (DBCP)

In re: Notice of Intent to Suspend Registrations of Pesticide Products Containing Dibromochloropropane (DBCP), FIFRA Docket No. 485.

Recommended Decision

This is an expedited hearing under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") Section 6(c)(2), 7 U.S.C. 136d(c)(2). It arises out of the notice issued by the Administrator on July 18, 1979, of his intent to suspend all registrations of pesticide products containing the pesticide dibromochloropropane ("DBCP"). 44 FR 43335 (July 24, 1979). At issue is whether the suspension of all registrations of DBCP is necessary to prevent an imminent hazard during the time required to complete full-scale cancellation proceedings which are now pending under Section 6(b), 7 U.S.C. 136(b).[1]

Prior Proceedings

On October 27, 1977, the Administrator, acting pursuant to FIFRA, Section 6(b), 7 U.S.C. 136d(b), issued a notice of intent to cancel the registrations of pesticide products containing DBCP. All registered uses on 19 food crops were proposed to be cancelled. Other uses would be permitted to continue but only under specified conditions and restrictions ("conditionally cancelled" uses). 42 FR 57545 (Nov. 3, 1977). Simultaneously with the issuance of the notice of intent to cancel, the Administrator also issued, under FIFRA Section 6(c)(1), an order suspending all registered uses on 19 food crops, and imposing conditions and restrictions on remaining uses, pending completion of the cancellation hearing. 42 FR 57543 (Nov. 3, 1977).[2]

A hearing on the notice of intent to cancel was deferred pending completion of an administrative review of DBCP products under the Agency's "RPAR" process.[3]

Upon completion of the RPAR review, the Administrator, on September 6, 1978, issued an amended notice of intent to cancel registrations of DBCP. 43 FR 40911 (Sept. 13, 1978).[4] Timely requests for a hearing were filed, and this cancellation proceeding was pending at the time the notice of intent to suspend which started this proceeding was issued.[5]

The Notice of Intent To Suspend

In his notice of intent to suspend, the Administrator stated that since October 27, 1977, the date of the suspension order, the agency had received additional information indicating that the order is not adequate to reduce the risks associated with any continued use of DBCP even on an interim basis. 44 FR 43337–338. The new information related not to the potential human health effects associated with exposure to DBCP—carcinogenicity and testicular toxicity—but to whether the conditions and restrictions on use adequately protected farmworkers and other members of the public from an unreasonable risk of harm from the continued use of DBCP. Briefly, the new information coming to the attention of the Administrator was as follows (44 FR 43338):

1. Residue data developed by the California Department of Food and Agriculture indicating that crops treated with DBCP under the terms of the conditional suspension order will be contaminated with DBCP residues.

2. Recent investigations by California state officials disclosing the presence of DBCP in high levels in active groundwater wells and in community supply wells in counties in California where DBCP was previously used, and information that DBCP has been found in wells in Arizona and Hawaii, all indicating that continued used of DBCP may result in contamination of drinking water supplies.

3. Data developed by California state officials with respect to ambient air levels of DBCP resulting from its use indicating that the terms of the conditional suspension action may not adequately protect applicators, farmworkers and bystanders.

The Administrator concluded, based on this additional information that continued use of DBCP did present an imminent hazard, with the risk of adverse human health effects outweighing any benefits of the continued use of DBCP during the year or possibly more required for completion of the cancellation proceeding. Accordingly, he issued the notice of intent to suspend which is the subject of this proceeding. 44 FR at 43339.

Timely requests for hearing were filed by three registrants of DBCP products: Amvac Chemical Company, the Gowan Company, and the Pineapple Growers Association of Hawaii. In addition, the State of Hawaii, the National Peach Council, Quimica Organica de Mexico, S.A., the Secretary of the United States Department of Agriculture, and several farmworker and public interest groups referred to collectively as "Carlos Amaya," were permitted to intervene. The California Citrus Quality Council, originally an intervenor, withdrew and filed a final brief as *amicus curiae*.

The Issue of Imminent Hazard

As previously stated, the purpose of the suspension proceeding is to determine whether action is necessary to prevent an imminent hazard during the time required for cancellation. An "imminent hazard" is defined in pertinent part as follows (FIFRA, Section 2(*1*), 7 U.S.C. 136(e)):

> The term "imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment.

The term "unreasonable adverse effects on the environment" is defined as follows (FIFRA, Section 2(bb), 7 U.S.C. 136 (bb)):

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[1] See *infra* p. 5 for definition of an imminent hazard.

[2] The Administrator had previously issued notice of his intent to suspend registered uses on the 19 food crops and to impose restrictions and conditions on other uses. 42 FR 48915 (Sept. 26, 1977). No hearing was requested on the intended suspension. The food products for which all uses were suspended were: broccoli, brussel sprouts, cabbage, carrots, cauliflower, celery, cucumbers, eggplant, endive, lettuce, melons, parsnips, peanuts, peppers, radishes, squash, strawberries (except nursery stock which is not allowed to fruit until after being transplanted), tomatoes and turnips. 42 FR 57543 (Nov. 3, 1977). The limitation of the suspension of strawberries to nursery stock was clarified by a subsequent statement by the Administrator.

[3] "RPAR" is an abbreviation for "rebuttable presumption against registration." Under the "RPAR" process, the Agency, upon determining that a pesticide meets or exceeds certain risk criteria, issues a rebuttable presumption against registration and provides an opportunity for registrants and other interested parties to rebut the presumption. The information is then reviewed to determine whether proceedings for cancelling or denying the registration should be instituted. 40 CFR 162.11.

[4] In the amended notice, the Administrator proposed to cancel, in addition to those registered uses on 19 food crops which had already been suspended, all uses on lima beans, okra, snap beans and southern peas, not grown for commercial purposes. The Administrator also spelled out in greater detail the restrictions and conditions of use.

[5] No evidentiary hearings have been held in the cancellation proceeding. As explained in the notice of intent to suspend, the Administrator has been considering whether, in addition to holding a hearing on his intended cancellations of certain uses and restrictions and conditions on other uses, a hearing should not also be held on whether the uses which had only been conditionally cancelled should not also be entirely cancelled or be made subject to additional restrictions and conditions on their continued use. 44 FR 43335 (July 24, 1979).

The term "unreasonable adverse effects on the environment" means 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.

In addressing the nature of a suspension hearing, the courts have stated that its purpose is not to make a final determination on the merits, but only decide if there is a substantial likelihood that serious harm will be experienced during the period that will be required for completion of the full scale hearing. *EDF, Inc. v. EPA (Shell Chemical Co.)*, 510 F. 2d 1292, 1299 (D.C. Cir. 1975). It entails a *preliminary* assessment of the probability of harm and not the ultimate resolution of difficult issues, which is left for the cancellation proceeding. *EDF, Inc. v. EPA (Velsicol Chemical Co.)*, 548 F. 2d 998, 1004 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 925.

The Suspension Hearing

In his suspension notice, the Administrator directed that all hearing procedures and the rendering of a recommended decision be completed within 60 calendar days from the first prehearing conference. 44 FR 43340. Pursuant to statute and the notice, the formal expedited hearing started on August 2, 1979, and the first prehearing conference was also held on that date. Notice of these proceedings was published in the Federal Register on July 31, 1979, 44 FR 44931. After two prehearing conferences, evidentiary hearings began August 20, 1979, and were formally concluded on October 12, 1979, the Administrator on September 21, 1979, having extended the deadline to October 22, 1979, when it became apparent that the case could not be concluded within the 60-day period.

The procedure following in the hearing should be briefly commented on. It was clear that there were two separate issues in this case. The first issue was the "risk" or hazards associated with DBCP. Under this issue fall the toxicity of DBCP and the likelihood that humans would be exposed to the pesticide. The second issue was the benefits associated with DBCP. Under this issue fell the question of what would be the environmental, social, and economic costs if DBCP were suspended. The answer to the ultimate question of whether or not there should be suspension, depended on balancing the risks against the benefits. In order that a proper evaluation could be made, accordingly, it seemed important that the risks and the benefits be clearly differentiated so far as possible. I accordingly ruled at the beginning of the case that the risk part of the case be tried first, and then the benefits part would be tried.[6] In general, there was a clear-cut division between risk and benefits in terms of the evidence, but it did appear in considering the actual costs and benefits of using DBCP that there were areas where the distinction between risk and benefit could not always be clearly made, and some evidence arguably relating to risk was also introduced during the benefits aspects of the case. See *e.g.*, Tr. 5086.

The record comprises some 7300 pages of testimony and 90 exhibits.[7] Proposed findings of fact and conclusions and briefs have been filed. All findings which have not been adopted are rejected. The citations to the record are not intended to include all portions of the record relating to the point discussed but only some of the salient evidence on that point. On consideration of the briefs and of the entire record, I recommend that the Administrator suspend all registrations of DBCP immediately. My recommended findings and conclusions and the reasons therefore are as follows:

I. The Pesticide Dibromochloropropane

Dibromochloropropane ("DBCP") is the trivial or common name for 1,2-dibromo-3 chloropropane.[8] It is a soil fumigant and is used as a nematicide, killing nematodes in the soil, which attack the roots of crop-bearing plants. DBCP is manufactured from allyl chloride and bromine. Tr. 996, 3753. The technical or commercial grade usually contains a small amount of impurities consisting of unreacted allyl chloride and by-products of the manufacturing process. Epichlorohydrin may also be added to stabilize the product. Tr. 996. Technical grade DBCP is sold to the user either in a formulated solution, in which it has been mixed with emulsifiers to make it more usable, or in the unformulated technical grade.

II. The Risks Presented by DBCP

The evidence on risk was essentially of two kinds: evidence relating to the toxicity of DBCP, and evidence relating to the likelihood that humans will be exposed to DBCP. On the question of toxicity, evidence was introduced that DBCP may be a carcinogen (poses a risk of cancer in humans), it may have adverse effects on male fertility, and it may be a mutagen (adversely affects human genetic materials or the genetic process). As to exposure, evidence was introduced on the likelihood that DBCP, if used, will contaminate food products treated with DBCP and drinking water, and will be inhaled by those who apply it or are in the vicinity were it is used.

A. The toxicity of DBCP

1. The Significance of Animal Bioassays in Identifying Human Carcinogens

There are no human epidemiological studies in which people have been deliberately exposed to doses of DBCP in order to determine whether DBCP causes cancer in humans.[9] Bioassays of suspected carcinogens on animals, however, if properly designed and conducted are an indication of whether the chemical is likely to be carcinogenic in people.[10]

Dr. Roy E. Albert, Deputy Director of the Institute of Environmental Medicine, New York University Medical Center and chairman of the EPA's Carcinogen Assessment Group explained the rationale as follows (Tr. 1912–14):

Q. Could you explain the basis for your conclusion that the data indicating that DBCP is an animal carcinogen, demonstrates that DBCP poses a cancer risk to humans exposed to DBCP?

A. (Dr. Albert) This has to do with the validity of animal bioassays as a predicter of human cancer response. The basic supporting evidence that can be marshaled, is to look at those agents which have caused cancer in humans, and then to evaluate how animals respond to these agents.

Out of the 26 or so agents that have been identified as human carcinogens, rats and mice show a very high degree of comparability in terms—in response. There are only two agents that have not—that are known to cause cancer in humans, that not really been solidly shown to cause cancer in animals, benzene and arsenic, and benzene is

[6] See Transcript of Prehearing Conference at Tr. 71. Under the procedure adopted, the EPA and Carlos Amaya presented their evidence on risk, followed by the presentation by the registrants and intervenor the State of Hawaii of their risk evidence. The Secretary of Agriculture and the National Peach Council had indicated that their evidence would relate to benefits. See Transcript of prehearing conference at 8–9, 392. For the convenience of the witnesses of the Pineapple Growers Association of Hawaii and the State of Hawaii, these parties were allowed to present both their risk and benefit evidence during the risk part of the case. Amvac also presented its one benefit witness during the risk part of the case.

[7] Exhibits have been marked to show the sponsoring party and each party's exhibits have been numbered numerically, *e.g.*, EPA Ex. 1. In citing to the record, a reference such as "EPA Ex. 1 (Ex. 2)" is to an exhibit attached to the main exhibit. "Tr." refers to the transcript of testimony. Pursuant to procedures adopted in Prehearing Order No. 1, direct testimony has been submitted in written form.

[8] See stipulation following Tr. 1926 for chemical properties of DBCP.

[9] As Dr. Weisburger testified, "[W]e don't do that sort of experiment; that's not done." Tr. 95.

[10] Tr. 94, 1912–14; EPA Ex. 24, p. 12(a). (Exhibits 1 and 2 thereto); see EDF, Inc. b. EPA (Shell Chemical Co.), 510 F.2d 1292, 1299 (D.C. Cir. 1975).

also falling by the wayside now because there is emerging evidence that it can cause cancer in animals.

So that a very high proportion of agents which cause cancer in humans, also cause cancer in rats and mice. Furthermore, in the majority of cases, the cancers that are caused are the same as those caused in humans, when the exposure route is comparable.

That, coupled with the pathologic similarity and the evolution in appearance of these lesions, lends very strong support to the use of animals as bioassay tools for identification of agents which could cause cancer in humans. Now, it's quite possible that there are false positives in animals. We don't have great deal of information on this, so the foundation really is on the similarity in the behavior of agents which cause cancer in humans, to that which causes cancer in rats and mice.

Judge Harwood: What did you mean by a false positive?

The Witness: That is that an animal would show a carcinogenic response, and humans wouldn't. There are some questionables. For example, coal dust has been shown to cause cancer in animals, in rats, and the evidence that it causes cancer in humans is pretty thin. That is, in coal miners. There are a few other situations in which the available studies in humans don't support the cancer-producing action of agents which have shown to be carcinogenic—so that remains a possibility, but from an operational standpoint, I think it's a legitimate position to regard positive animal responses as indicators of cancer hazards for humans.

The EPA certainly has taken this position. The Interagency Regulatory Liaison Group, in its document on risk assessment—this liaison group consists of representatives from EPA, FDA, OSHA, and CPSC—have all agreed that animal bioassays are legitimate indicators of agents which should be regarded as carcinogenic hazards to humans.[11]

2. DBCP is a Potential Human Carcinogen

A bioassay on animals to test the long-term (chronic) carcinogenic activity of DBCP was conducted for the National Cancer Institute (NCI) by Hazleton Laboratories between 1972 and 1974. The final report was released in 1978.[12] Two animal species were used: rats and mice. Technical grade DBCP purchased from Shell Chemical Co. and testing from 93% to 96% pure was the test substance.[13]

The test was a feeding test and DBCP in corn oil was administered by gavage (through a tube inserted into the upper part of the stomach) 5 days a week at either of two dosages to groups of 50 male and 50 female animals of each species.

Initial dosage levels for the chronic bioassay were selected on the basis of a preliminary subchronic toxicity test.[14] Subsequent dosage adjustments were made during the course of the chronic bioassay. The time-weighted average dosages of DBCP in the chronic study were 29 mg/kg body weight per day (mg/kg/day) for the high dose rats of both sexes, and 15 mg/kg/day for the low dose rats of both sexes. The time-weighted average concentrations for the high dose male and female mice were 219 and 209 mg/kg/day, respectively. The time-weighted average concentrations for the low dose male and female mice were 114 and 110 mg/kg/day, respectively.

For each species, 20 animals of each sex were placed on test as vehicle controls. These animals were intubated with corn oil at the same time that dosed animals were intubated with DBCP mixtures. Twenty animals of each sex were placed on test as untreated controls for each species. These animals received no gavage treatments.

DBCP was adminstratered to the high dose male and high dose female rats for 64 weeks prior to sacrifice, and to the low dose female rats for 73 weeks prior to sacrifice. The low dose male rats were treated for 78 weeks followed by an additional 5 weeks of observation. The high dose male and female mice were treated for 47 weeks prior to sacrifice; the low dose male mice were treated for 59 or 60 weeks prior to sacrifice, and the low dose female mice were treated for 60 weeks prior to sacrific.

The histopathologic findings in the rats disclosed that squamous-cell carcinomas of the forestomach occurred in 47/50 (94%) of the low dose males, 47/50 (94%) of the high dose males, 38/50 (76%) of the low dose females, and 29/49 (59%) of the high dose females. These tumors were not observed in the control rats. Adenocarcinomas of the mammary gland were observed in 24/50 (48%) of the low dose femals rats and 31/50 (62%) of the high dose female rats compared to 2/20 (10%) in the untreated controls, and none in the vehicular control.[15] Among mice squamous cell carcinomas of the forestomach occurred in 43/46 (93%) of the low dose males, 47/49 (96%) of the high dose males, 50/50 (100%) of the low dose females and 47/48 (98%) of the high dose females, but in no male or female controls.[16]

The results of the study were summarized as follows (Ex. 1 (Ex. 2), p. V):

> In rats and mice of both sexes, statistically significant incidences of squamous-cell carcinomas of the forestomach occurred in each dosed group and a significant positive association existed between dosage level and tumor incidence. The incidence of adenocarcinomas of the mammary gland were statistically significant in female rats when the treated groups were compared to the controls. Toxic nephropathy was also observed at elevated incidences in all of the treated rats and mice when compared to their respective untreated or vehicle control groups.
>
> Under the conditions of this study, DBCP is a stomach carcinogen in rats and mice of both sexes and is carcinogenic to the mammary gland in female rats.

A chronic bioassay of exposure of DBCP by dermal contact on mouse skin was also performed by Dr. Benjamin L. Van Duuren, Professor of Environmental Medicine and Associate Director of the Institute of Environmental Medicine at New York University Medical Center, who did the study in association with other workers in his laboratory.[17] Dr. Van Duuren described the nature of the tests and their results as follows:

> The chronic bioassays of DBCP on mouse skin were of two different types. The first chronic bioassay was a two-stage carcinogenesis bioassay which is also known as an initiation-promotion bioassay. In this type of bioassay, a single mouse skin application of the compound to be tested for carcinogenicity is followed by repeated application of a promoter. A promoter is a compound which is not itself carcinogenic at the dosage used, but which enhances the carcinogenic potential of the test compound. The promoter most frequently used is phorbol myristate acetate (PMS). This type of bioassay is used because it may yield results earlier than in the usual mouse skin bioassay in which the test agent is applied repeatedly. Also, this bioassay at times gives positive results when the repeated application test is negative.
>
> DBCP was tested in the initiation-promotion bioassay in random-bred ICR/Ha Swiss female mice using 30 animals per

[11] See EPA Ex. 24 (Ex. 2).

[12] The study is discussed in the testimony of Dr. Elizabeth K. Weisberger, EPA Ex. 1, and is attached as Ex. 2 to that testimony.

[13] See EPA Ex.1 (Ex. 1); Amvac Ex. 1; Tr. 75.

[14] The dosages were selected on the basis of the maximum tolerated does (MTD) and one-half that dosage. Roughly, the maximum tolerated dose is the highest dose which will have no significant toxic effects on the animal other than those related to a tumorous response. EPA Ex. 24 (Ex. 2), p. 39864.

[15] EPA Ex. 1 (Ex. 2) at 23–25.

[16] EPA Ex. 1 (Ex. 2) at 37–38.

[17] The study is in evidence as Exhibit 1 to EPA Ex. 3, and is discussed in Dr. Van Duuren's testimony (EPA Ex. 3; Tr. 158–209).

group.[18] A single application of DBCP to the dorsal skin at a dose of 69.0 mg in 0.2 ml of acetone was followed by repeated skin application at the same site of a tumor promoter, phorbol myristate acetate, three times weekly for the duration of the experiment (499 days). This bioassay resulted in six mice with one skin papilloma each—a significant incidence of skin tumors as compared to controls (p less than 0.05). DBCP may therefore be considered as a weak tumor-initiator in two-stage carcinogenesis on mouse skin.

The second type of chronic bioassay performed on DBCP was a classical repeated skin application experiment, again using random-bred ICR/Ha Swiss female mice in groups of 30 animals DBCP was applied to the dorsal skin of one group at a dose of 35.0 mg. in 0.2 ml of acetone three times weekly for the duration of the experiment (440 days) and to the dorsal skin of another group at a dose of 11.7 mg in 0.2 ml of acetone three times weekly for the duration of the experiment (474 days).

In this bioassay, repeated skin application of DBCP resulted in only one animal in the high dose group with a skin papilloma, indicating that DBCP is essentially inactive as a whole mouse skin carcinogen. However, in both the high and low dose groups DBCP was an active carcinogen at sites distant from the site of application, where a highly significant incidence of tumors was observed.

Specifically, in the high dose group 23 of 30 mice had lung papillomas (statistically significant at p less than 0.01) and 15 of 30 mice had papillomas or squamous cell carcinomas of the forestomach (p less than 0.0005). Ten of the 30 mice had squamous cell carcinomas of the forestomach (p less than 0.005).

In the low dose group, 29 of 30 mice had lung papillomas (p less than 0.0005) and 20 of 30 mice had paillomas or squamous cell carcinomas of the forestomach (p less than 0.0005). Five of the 30 mice had squamous cell carcinomas of the forestomach (p less than 0.005).

These results are especially significant since they are consistent with the results of earlier reports which indicate that DBCP is carcinogenic to mice and rats by intubation, inducing the same type of malignant tumors observed here—that is, squamous cell carcinomas of the forestomach (1,2). In other words, DBCP exhibits site-specific carcinogenic activity via two different routes of administration in mice, providing strong evidence of its carcinogenic character.

Dr. Van Duuren also testified that in the two-stage carcinogenesis bioassay from which it was concluded that DBCP is a weak tumor-initiator on mouse skin, the statisical analysis of the results from testing both DBCP and the carcinogenic effects were attributable to DBCP and not the promoter. Tr. 175–76. As to the second bioassay, involving repeated applications of DBCP on the mouse skin, Dr. Van Duuren recognized that the ingestion of DBCP through animal grooming behavior may have been a cause of the forestomach cancer found in the mice. This, however, did not change his conclusion that absorption of DBCP through the skin was also a cause of the forestomach cancer. EPA Ex. 12 at 4–5; Tr. 181–2, 205–6.

Chronic bioassays of DBCP were also performed for The Dow Chemical Company by the Hazleton Laboratories and were submitted to the EPA in 1978.[19] The animal species again used, were rats and mice. The DBCP in these studies was administered in the diet without feeding by gavage and was comprised of about 95% DBCP. EPA Ex. 24 (Ex. 6a).[20] In these bioassays, DBCP was administered in the diet to three groups of rats, 60 male and 60 female rats being in each group at levels of 0.3, 1.0 and 3.0 per mg/kg/day for 104 weeks.[21] The DBCP was premixed with corn oil and this premixture was mixed in with the rats' basal diet consisting of Purina laboratory chow and water. A control group of 60 male and 60 female rats received only the basal diet mixed with corn oil. Ten rats of each sex in each group were sacrificed at Week 52 and all surviving rats were sacrificed at Week 104. In the mouse bioassay, DBCP was mixed into the mice's basal diet and was administered to three groups of mice, 50 male and 50 female being in each group, over 78 weeks, at levels of 0.3, 1.0, and 3.0 mg/kg/day.[22] A control group of 50 male and 50 female mice received only the basal diet.

The EPA's Carcinogen Assessment group tabulated the results of the study and found that DBCP-fed male and female rats experienced statistically significant excesses of several tumor types over the control animals. The tabulation performed by the EPA shows the following (EPA Ex. 4, p. 4):

Number of Rats With Tumors of the Kidney, Stomach, and Liver

Dose [23] (mg/kg/day)	Males				Females			
	0	.20	.68	2.0	0	.20	.58	2.0
Rats examined	48	46	46	41	48	45	47	43
Renal Tubules:								
Number with adenoma	0	0	1	[24]*6	0	0	0	[24]*7
Number with carcinoma	0	1	3	[24]*9	0	1	0	[24]*5
Total with tumors	0	1	4	[24]*15	0	1	0	[24]*12
Stomach, squamous cell:								
Papilloma	0	0	0	1	0	0	0	2
Carcinoma	0	0	3	[24]*20	0	0	0	[24]*8
Total	0	0	3	[24]*21	0	0	0	[24]*10
Liver:								
Neoplastic nodules	0	4	2	3	0	2	2	3
Hepatocellular carcinoma	0	1	2	[24]*5	0	1	3	0
Total	0	[24]*5	4	[24]*8	0	3	[24]*5	3

[23] The Carcinogen Assessment Group's approximation of actual intake after volatilization. See n. 21, supra, EPA Ex. 4, p. 4.
[24] Asterisk denotes a statistically significant difference over controls (p. value less than 0.05).

As the table indicates, both males and females in the high-dose group experienced statistically significant incidences of adenomas, carcinomas, and total tumors in the renal tubules. Both males and females in the high-dose group developed statistically significant incidences of squamous cell carcinomas in the stomach. High-doses males developed a statistically significant incidence of hepatocellular carcinomas; Low-dosed males and females in the

[18] The DBCP was obtained from Dow and again was of technical grade, containing 96.2% DBCP. A quantitative analysis of the impurities was not made at that time. The material was distilled by Dr. Van Duuren's research team before it was used in the bioassay. A quantitative analysis of the same batch of DBCP distilled by the same procedure was made subsequent to the study and it disclosed that the material was 99.88% pure, containing .06% allyl chloride and 0.6% epichlorohydrin. EPA Ex. 2; Tr. 161–67, 203.

[19] The Dow Chemical Co. is a registrant of DBCP under the trademark FUMAZONE. EPA Ex. 24 (Ex. 6c). The studies are in evidence as exhibits 1–3 to EPA Ex. 4, and are discussed in Dr. Hiremath's testimony (EPA Ex. 4 and Tr. 216–271) and Dr. Albert's testimony (EPA Ex. 24).

[20] The material contained no epichlorohydrin, and no more than 3.4% allyl chloride. EPA Ex. 24 at 7, n. 4; Tr. 1869.

[21] These were actually the nominal doses because some of the DBCP in the food was lost through evaporation. The Carcinogen Assessment Group of the EPA calculated the actual doses as 0.20, 0.68, and 2.0. Tr. 242–43, EPA Ex. 4, p. 4; EPA Ex. 24 (Ex. 6).

[22] These doses were also nominal doses because of evaporation of some of the DBCP. The Cancer Assessment Group of the EPA calculated the high dosage, the only group for which histopathological examinations were completed, as 2.7 mg/kg/day. Tr. 242–43; EPA Ex. 4, p. 5. Possible exposure to inhalation of DBCP caused by the volatilization was not considered a signficant factor. Tr. 1892.

middle dose group developed statistically significant incidences of hepatocellular carcinomas and neoplastic nodules in the liver.

In the mouse study, histopathological reports were available only in the control and high dose groups.[25] The result of the study was summarized as follows by Hazleton laboratories in its report (EPA Ex. 4 (Ex. 3), pp. 1–2:

A dose-related increase in the incidences of stomach nodules was noted in all treated (animals) sacrificed at termination. Histological examinations of stomach sections from the control and high-dose group revealed the presence of chemically-induced neoplasia in 34 males and 24 females of the high-dose group. These neoplasms consisted of squamous cell papillomas and carcinomas in the nonglandular region of the stomach. Such neoplasms were not observed in stomach sections of control animals.* * * These findings are attributed to the dietary administration of DBCP. Therefore, under the conditions of this study 1, 2-dibromo-3 chloropropane is considered to be a carcinogen.

The Carcinogen Assessment Group concluded that the Dow-Hazleton bioassays, showing dose-related, statistically-significant incidences of tumors in both rats and mice buttressed the conclusion that DBCP is likely to be a human carcinogen.

The three studies discussed above, the NCI study, that performed by Dr. Van Duuren, and the Dow-Hazleton study, all resulted in findings that DBCP was a carcinogen in the animals tested, and under the conditions studied.[26]

Dr Albert, Chairman of the EPA's Carcinogen Assessment Group, summarized how these studies support the general conclusion that DBCP is carcinogenic in animals and so can be reliably used to evaluate the potential carcinogenic risk of DBCP to humans (EPA Ex. 24, pp.3–5):

NCI Study

This study demonstrated that administration of DBCP, by oral intubation, to Osborne-Mendel rats and B6C3F1 mice produced statistically significant excess incidences of squamous cell carcinomas of the stomach. These effects were observed in both sexes of both species and at both dose levels. These types of tumors are relatively rare in untreated and vehicle control animals: In addition, statistically significant excess incidences of mammary adenocarcinomas in female rats were observed at both dose levels.

Dow-Hazleton Studies

In the Dow-Hazleton Studies, DBCP administered in the diet to Charles River albino rats and HaM/IcR Swiss albino mice produced statistically significant excess incidences of squamous cell carcinomas and pipillomas of the forestomach in both sexes of both species. In addition, renal tubular tumors in rats were observed at the highest dose level in both sexes, and liver tumors were induced at both low and high dose levels in males and the middle dose level in females. The carcinogenic effects observed in the Dow-Hazleton Studies are consistent with effects observed in the NCI Study. The appearance of statistically-significant incidences of squamous cell carcinomas of the forestomach in both studies is particularly noteworthy. Furthermore, the Dow-Hazleton Studies resulted in responses similar to those observed in the NCI Study, even though the dose levels in the Dow-Hazleton Studies were relatively low: The dosage for mice in the Dow-Hazleton Studies was one-fiftieth of the dosage used in the NCI Study; the dosage for rats was one-fourteenth of the dosage used in the NCI Study.

Van Duuren Study

Dr. Van Duuren conducted a skin bioassay on mice in which a highly significant incidence of tumors at remote sites—the lung and forestomach—resulted from repeated skin application of DBCP in both the high and low dose groups. In particular, the incidence of squamous cell carcinomas of the forestomach—the same type of malignant tumor which was observed at statistically significant levels in both the NCI Study and the Dow-Hazleton Studies—was highly statistically significant. The fact that these remote site tumors occurred following dermal exposure to DBCP (recognizing the possiblity that oral exposure may also have resulted from grooming behavior) is confirmation of the carcinogenicity of DBCP.

In further confirmation of the fact that DBCP poses a risk of cancer to humans, Dr. Albert referred to preliminary data received by the Carcinogen Assessment Group with respect to a study by the NCI on carcinogenesis by inhalation of DBCP in rats and mice. Thus, Dr. Albert stated that in a group of 49 male Fisher rats exposed to 3 ppm DBCP for 721 days, 39 developed nasal tumors and 29 developed cerebral tumors; in a group of 50 controls no nasal tumors and one cerebral tumor appeared.

In a group of 48 female Fisher rats exposed to DBCP at the same concentration and for the same period as the males, 36 developed nasal tumors, and 26 developed cerebral tumors; in 50 controls, one of each type of tumor appeared. In a group of 48 male B6C3F1 mice exposed to 3 ppm DBCP for 721 days, 14 developed nasal tumors; none of the controls developed nasal tumors. In a group of 50 female B6C3F1 mice, 36 developed nasal tumors; 16 developed cerebral tumors; and 14 developed lung tumors. In the group of 50 female B6C3F1 control mice none developed nasal tumors; one developed a cerebral tumor; and none developed lung tumors. The data are summarized in Tables 3, 4, 5 and 6 in Dr. Albert's written direct testimony (EPA Ex. 24).

Dr. Albert concluded that these high incidences of tumors in both sexes of two species of treated animals adds further confirmation to the conclusion that DBCP is carcinogenic. Although the results of this study are preliminary, Dr. Albert considered these preliminary results to provide a reliable basis for evaluating the study since the Carcinogen Assessment Group has been advised that NCI has substantially confirmed the pathologic diagnoses. EPA, Ex. 24, at 5–6.

3. DBCP Has Harmful Testicular Effects in Males

Dr. M. Donald Whorton testified for the EPA on the testicular toxicity of DBCP.[27] Dr. Whorton is board certified both in internal medicine and occupational medicine and is presently Senior Medical Associate, Environmental Health Associates, Inc. and Clinical Associate Professor, School of Public Health, University of California, both in Berkeley. He has spent eight years in the practice of occupational and internal medicine and has published numerous articles in scientific journals on subjects relating to his areas of qualification.

[25] The nominal dosage for the high dose group was 3.0 mg/kg/day, but because of volatilization, the Carcinogen Assessment Group estimated the actual dosage intake as 2.7 mg/kg/day. *Supra*, n. 22.

[26] The purpose of the study was to determine whether the chemical did induce cancer in the animals tested at some level of dosage. The rationale is explained in a joint agency report reflecting the consensus of scientists in the four regulatory agencies which regulate carcinogenic substances on how to identify potential carcinogens and estimate their risks. EPA Ex. 24 (Ex. 2). It is here stated (*Id.* at 39864):

Bioassays with the use of a few doxen or even a few hundred animals have relatively low sensitivity for detection of carcinogenic effects. Millions of people of varying degrees of sensitivity or exposure may be exposed to the substances under evaluation. Though a test animal cannot be strictly viewed as a "surrogate" of a large number of people without oversimplification, the role of animal tests is to provide maximum detectability of carcinogenic effects within the already narrow confines of test sensitivity. Under otherwise identical conditions, the greater the ratio of test exposure to human exposure, the greater is the safety margin provided by a negative result in a carcinogenesis bioassay * * * Results of bioassays done at doses and under conditions permitting maximum expression of carcinogenicity provide a sound basis for the identification of a carcinogenic hazard or its absence.

[27] Dr. Whorton's testimony is in EPA Ex. 13 and at Tr. 972–1043.

In July 1977, Dr. Whorton, at the request of the Oil, Chemical and Worker's Union ("Union") analyzed sperm specimens of seven male employees of the Occidental Chemical Company's Agricultural Chemical Division ("AC Division"). The sperm counts of all seven employees were found to be abnormally low. Most of the men were azoospermic (had no sperm), the remainder were severely oligospermic (had lower than normal sperm counts). As a result, a further examination was made by Dr. Whorton and his associates of the current employees of the AC Division. The suspected cause of infertility was DBCP since Occidental had been regularly formulating DBCP in the Agricultural Chemical Division since 1962.[28] A study of the non-vasectomized male employees in the Division, of whom there were 25, disclosed that 22 of the employees could be divided into two groups of 11 men each. One group with undisputably depressed sperm count of 1 million sperm per millitre of seminal fluid ("million/ml") or less, and one group within the normal range of 40 million/ml or greater. The most striking relationship, Dr. Whorton noted, was the duration of potential DBCP exposure, measured by time of employment in the AC Division, to sperm count. Workers with sperm counts of one million/ml or less had been exposed for three years. None of the workers with sperm counts above 40 million/ml had been exposed for more than three months.[29]

As a result of this data, both the Union and Occidental requested NIOSH (National Institute of Occupational Safety and Health) to undertake a health evaluation study of the remaining workers at the Occidental plant. NIOSH contracted with Dr. Whorton to do the study, who subcontracted with two other medical doctors to assist him.

All employees at the Occidental plant were offered the opportunity to be examined in the study but not all participated. Out of a total of 310 employees, 196 male employees were examined. These 196 were questioned on whether or not they were exposed to DBCP. Exposure was determined on the basis of whether the employee had worked in the AC Division or had been exposed to DBCP during a brief period in the early 1960's when DBCP had been used in formulating pellets for Occidental's pellet plant, or had been exposed to DBCP in their work as applicators or set-up men. EPA Ex. 13 (Ex. 2) at 10–11; Tr. 975–76. Applying this qualitative test, 154 individuals were classified as exposed to DBCP and 42 were classified as not exposed. One hundred and seven (107) exposed individuals and 35 not exposed were able to produce semen specimens for analysis. The group of 35 not exposed were used as a control group. Among the 107 exposed individuals, 91 men were also able to be classified according to a quantitative estimate of exposure arrived at by measuring months of exposure (and not by determining the actual quantities of DBCP to which any individual may have been exposed.)[30]

Applying the qualitative estimate of exposure (Exposed-Not Exposed), the study revealed that a median sperm count for the group of 35 men classified as Never Exposed to DBCP was found to be approximately 78 million; the median sperm count for those Exposed to DBCP (107 men) was approximately 45 million. The difference in the median sperm count between Exposed and Not Exposed was statistically significant.

A second comparison of exposure and sperm count was made using the 91 men from the group of 107 men qualitatively classified as Once Exposed to DBCP who could be assigned an estimated quantitative exposure value. Also included in this comparison were the 35 men qualitatively classified as Never Exposed to DBCP. Each man was placed in one of two groups according to sperm count. The two groups were: "Greater Than 20 million sperm/ml." and "Fewer Than 20 million sperm/ml." MacLeod's definition of oligospermia of less than 20 million sperm/ml of semen was chosen.[31] The percent of men who fell into each exposure category was calculated and the between-group ratio was examined. The number of normospermic men in the No Exposure group was thirty-four times greater than the number of oligospermic men in that same group. For the exposed group, in the 1–6 month category the ratio of normospermic to oligospermic was eleven to one; in the 7–24 month category the ratio was 2.5 to one; and in the 25–42 month category the ratio reversed so that the number of oligospermic men was twice as great as the number of normospermic men in this category. An even greater difference was observed in the greater than 42-month duration category, where the ratio of oligospermic men to normospermic men was 3.25 to one. This indicated an exposure response relationship between potential duration of DBCP exposure and oligospermic men.

The study also disclosed that 9 of 14 applicators studied had sperm counts of less than 40 million/ml, although in other respects analysis of sperm count by place of work provided little useful information. EPA Ex. 13 (Ex. 2) at 15.

A second study was performed by Dr. Whorton and his associates at the Mobile, Alabama plant of Shell Oil Company.[32] Shell had been manufacturing DBCP at this plant during the 15-month period prior to June 1977. The method of study was similar to that used in the Occidental Study. Table III attached to Dr. Whorton's written direct testimony summarizes the results as follows:

Summary of Shell Mobile Data

1. Chemical of concern—DBCP
2. Cohort size

a. Exposed	85
b. Not-exposed	84
c. Total	169

3. Participation rate

a. Exposed	83%
b. Not-exposed	44%

4. Cumulative percent distribution of sperm counts

a. Descriptive Characteristics

	Exposed	*Not exposed*
i. Number [33]	71	34
ii. Median (million sperm/ml)	46	88
iii. Azoospermia [34]	1.4%	2.9%
iv. Oligospermia	15.5%	5.9%

[33] This was the number who were able to provide semen samples which could be used for analysis.

[34] It was the opinion of Dr. Whorton and his co-authors that, the presence of so few azoospermics among the exposed group is related to the fact that the Mobile plant had produced DBCP for only a 15-month period so that exposures were not of sufficient duration and intensity to cause azoospermia on a larger scale. EPA Ex. 13 (Ex. 4) at 8.

b. Kolmogorov-Smirnov test results: exposed and not-exposed distributions were found to be dissimilar. (p> less than 0.05).

5. Conclusion: A positive association exists between exposure to DBCP and the existence of sperm-count suppression.

A third study was conducted by Dr. Whorton and his associates of the Denver, Colorado plant of Shell Oil Company. DBCP had been manufactured in this plant from 1956 to 1976.[35] The method for conducting the study was similar to that used in the studies of the

[28] EPA Ex. 13 (Ex. 1) at 1260. DBCP was extensively formulated in the AC Division between 1968–1977. Other chemicals were also formulated but in much smaller amounts. EPA Ex. 13 (Ex. 2), Tables 5A–5F.

[29] EPA Ex. 13 at 5. Three of the 25 employees who had one year of potential exposure to DBCP and had sperm counts from 10–30 million/ml were not included. *Id.* See also EPA Ex. 13 (Ex. 1) at 1260.

[30] More precise quantitative measurements of exposure were not possible. Tr. 1026–27.

[31] The figures are found in EPA Ex. 13 (Ex. 3). Table 1. For the validity of the MacLeod data as a control, see *infra*., n. 51.

[32] The Mobile Study is Ex. 4 to EPA Ex. 13. The plant manufactured technical grade DBCP. Tr. 998.

[35] The study is found at EPA Ex. 13 (Ex. 5). Here as in Mobile, the DBCP product manufactured was technical grade DBCP. Tr. 1007.

Occidental and Shell Mobile plants. Table IV, attached to Dr. Whorton's written direct testimony, EPA Ex. 13, summarizes the results as follows:

Shell Denver Data

1. Chemical of Concern—DBCP
2. Cohort size

a. Exposed	172[36]
b. Not exposed	148

[36] There was a 23% vasectomy rate among the exposed workers.

3. Participation rate

a. Exposed	48.3%
b. Not exposed	25.0%

4. Cumulative percent distribution of sperm counts

a. Descriptive Characteristics

	Exposed	Not exposed	External control[38]
i. Number[37]	64	20	71
ii. Median (million sperm/ml)	60.5	73	92
iii. Azoospermia	6.3%	0%	2.8
iv. Oligospermia	15.6%	10%	2.8

[37] Those providing semen samples which could be analyzed.

[38] The external control was a composite population consisting of 71 not-exposed chemical plant workers examined by Dr. Whorton and his associate in several other similar studies.

b. Kolmogorov-Smirnov test results: Exposed and not exposed distributions were not found to be dissimilar (p>greater than 0.10).

5. Conclusion: A statistically significant association between exposure to DBCP and the existence of sperm count suppression was not found; however, a statistically significant association was found when the DBCP exposed population was compared to an external control.

Dr. Whorton pointed out that in the Shell Denver study the number of hours of exposure to DBCP was summarized from personnel records. A system was then developed to standardize hours exposed by years worked. Seven of the nine individuals with 200 or more standardized exposure hours were either azoospermic or oligospermic. Dr. Whorton considered this an important finding and tending to support the notion of a causal relationship between DBCP-exposure and sperm-count depression. Tr. 1029–30; EPA Ex. 13 at 14.

Dr. Whorton's conclusion as to these three studies was as follows (EPA Ex. 13 at 17):

> In summary, DBCP has been clearly shown to be a testicular toxin affecting the primary spermatogonia. Our initial Occidental Chemical study has been replicated twice by us at other plants. We have yet to test a DBCP exposed population without observing an effect. In addition, the data indicate that the greater the exposure to DBCP, the more likely that males will have depressed sperm counts.

It is to be noted that all three of these studies were made under actual working conditions, and the DBCP considered was the commercial product being manufactured or formulated with whatever impurities it might contain.[39] In none of these places was there a completely closed system, so that in all there was some potential exposure by air.[40] No attempt was made to determine the relative importance of exposure from inhalation or from skin contact, or to determine the quantity of exposure which could be attributable to spills, of which there were undoubtedly some.[41] Nor was any effort made to determine the extent or the amount of exposure of each individual in the study to other chemicals.[42] The only factor which all exposed employees had in common was that they were potentially exposed to DBCP in their work, and the only factor which the non-exposed employees had in common was that, regardless of what else they may have been exposed to, they had not been potentially exposed to DBCP.

Dr. Whorton also conducted studies in 1978 to determine the capability of epichlorohydrin ("ECH") to produce adverse testicular effects. These studies were conducted at two plants at which Shell Chemical Co. produced ECH: the Deer Park Chemical Plant at Deer Park, Texas, where ECH had been produced since May 1948, and the Norco Chemical Plant, where ECH had been produced since April 1955.[43] Participants in the studies were selected on the basis of those current employees who could be identified as having been exposed to ECH.[44] An external not-exposed composite control group of 90 men was used consisting of all 35 not-exposed men in the Occidental study, 33 not-exposed men in the Shell Mobile study and 22 not-exposed chemical plant workers from other investigations conducted by Dr. Whorton and his associates. EPA Ex. 13 (Ex. 7) at 9. Tables V and VI attached to Dr. Whorton's written direct testimony summarize the data as follows:

Shell Deer Park Data

1. Chemical of Concern—Epichlorohydrin
2. Cohort size

a. Exposed	187
b. Not-exposed	Unknown
c. Total	Unknown

3. Participation rate

a. Exposed	45%
b. Not-exposed	zero

4. Cumulative percent distribution of sperm counts.

a. Descriptive characteristics

	Exposed	Not-exposed[45]
i. Number	84	90
ii. Median (million sperm/ml)	84	81
iii. Azoospermia	0%	2.2%
iv. Oligospermia	4.8%	3.3%

[45] Composite control group consists of not-exposed men from other studies.

b. Kolmogorov-Smirnov test results: Exposed and not-exposed distributions were *not* found to be dissimilar, (p greater than 0.10)

5. Conclusion: A positive association between exposure to ECH and the existence of sperm-count suppression has *not* been found.

Shell Norco Data

1. Chemical of Concern—Epichlorohydrin
2. Cohort size

a. Exposed	122
b. Not-exposed	Unknown
c. Total	Unknown

3. Participation rate

a. Exposed	36%
b. Not-exposed	zero

4. Cumulative percent distributions of sperm counts.

a. Descriptive characteristics

	Exposed	Not-exposed[46]
i. Number	44	90
ii. Median (million sperm/ml)	80	81
iii. Azoospermia	0%	2.2%
iv. Oligospermia	6.6%	3.3%

[46] Composite control group consists of not-exposed men from other studies.

b. Kolmogorov-Smirnov test results: Exposed and not-exposed distributions were *not* found to be dissimilar. (p> greater than 0.10)

5. Conclusion: A positive association between exposure to ECH and the existence of sperm-count suppression has *not* been found.

Summarizing the Deer Park and Norco data, Whorton stated, EPA Ex. 13 at 15–16:

> Analysis of sperm count data showed that the distribution of counts for both the Deer Park and Norco exposed populations were practically identical to the sperm count distribution observed in a non-exposed, comparison population. Hormonal data,

[39] See *e.g.*, Tr. 989.

[40] See *e.g.*, Tr. 992. A measurement of the air levels of DBCP in the Occidental plant in April and July 1977 disclosed DBCP as present in very small amounts. The eight-hour time weighted average was less than 0.4 ppm. EPA Ex. 13 (Ex. 2) at 13; EPA Ex. 13 (Ex. 1) at 1261; Tr. 978, 980, 991–93. A study of Shell's Mobile plant disclosed that there was a small amount of DBCP in the air at the time the study was made even though Shell had discontinued manufacturing DBCP eighteen months previously. Tr. 991, 1002.

[41] See *e.g.*, Tr. 987, 1004.

[42] See *e.g.*, Tr. 997.

[43] The studies are found in EPA Ex. 13 (Ex. 6).

[44] Data on exposure of Deer Park employees to ECH was obtained from plant management based on industrial hygiene survey data, personal knowledge of exposure and plant records. At Norco, exposure data was also obtained from plant management but was based much more heavily on personal knowledge of exposure than on industrial hygiene records. EPA Ex. 13 (Ex. 6) at 2, 8.

another way of assessing testicular function, revealed no significant abnormalities in either the Deer Park on Norco groups. Taken together, these findings suggested that, as a group, the 44 Deer Park employees and 84 Norco employees who participated in the study showed no evidence of ECH-related impairment of testicular function.

In still another study of the effects of DBCP on spermatogenesis, the EPA, through its Human Effects Monitoring Branch, Technical Services Division, Office of Pesticide Programs, contracted with the Epidemiologic Studies Program projects in South Carolina, Texas, New Jersey, Mississippi and California (ESP) to study whether DBCP may have affected agricultural workers who had been potentially exposed to DBCP.[47] The purpose of the study was to evaluate spermatic effects on formulators, commercial applicators, custom applicators, farmers, farm laborers, sales representatives and researchers who worked with DBCP. Candidate participants were located by different methods: In California, for example, individuals were initially identified through Agricultural Commission Use Reports. In other States, manufacturer representatives furnished names of primary distributors or direct applicators who were then contacted by project staff for identification of individual workers. Once located, the sole criteria for inclusion in the study was that a worker must have used or have been otherwise potentially exposed to DBCP. All such individuals willing to participate were included in the study. Physical examinations of the participants were made by a physician and each individual was interviewed and asked to complete a medical questionnaire.[48] The researchers eliminated one person who had a physical defect which might cause sterility.[49] Individuals exposed to EDB were also excluded because it was suspected of affecting spermatogenesis. The researchers determined that other pesticides to which the participants may have been exposed did not affect spermatogenesis.[50] Men with vasectomies and azoospermics were excluded from some of the statistical compilations.

The following results were obtained from the study:

South Carolina Cohort. Semen samples were obtained from 53 non-vasectomized participants. These were compared with data obtained from Dr. John MacLeod representing sperm counts from 9,000 males in infertile marriages with no known occupational exposure to toxic chemicals.[51] Six of eight (75 percent) formulators and 14 of 43 (32.5 percent) users, excluding two azoospermics had counts below 20 million/ml whereas only 15 percent of the 9,000 MacLeod subjects had counts below 20 million. Azoospermic were excluded to be consistent with the MacLeod data. These were statistically differences. A significant correlation was also demonstrated between sperm count and DBCP use-index (average pounds per day of use), in that the higher index value (i.e., the greater the use), the lower tended to be the sperm count. It is to be noted that Dr. Whorton found a similar relationship between sperm count and exposure value.[52]

California Cohort. Data from 95 individuals was obtained. Fifty of these individuals had used DBCP on 15 to 1,090 days during their lifetime twenty-two had used it on 10 days or less. Twenty-three had never been exposed to DBCP and were used as controls. Of the 50 workers having used DBCP on 15 or more days, two (4 percent) were azoospermic, and 17 of 48 (35 percent) had counts below 20 million/ml. There was no azoospermia among the 23 controls, and only one individual (4 percent) had a count below 10 million/ml. Including the two azoospermic in this group, 19 of the 50 workers (38 percent) had counts below 20 million/ml. and 26 (52 percent) had counts below 40 million/ml. The differences in percentages of exposed workers vs. MacLeod males with sperm counts below 20 million/ml (38.0 percent vs. 18.1 percent) and for those with sperm counts below 40 million/ml. (52.0 percent vs. 29.1 percent) are highly statistically significant p less than .005 for both tests.[53]

A second test of the same 50 California workers was calculated, this time comparing them with the 23 California Cohort "controls"—workers who had no known exposure to DBCP. One of the 23 controls (4.3 percent) had a count below 20 million/ml. and six (26.1 percent) had counts below 40 million/ml. The difference in percentages of exposed vs. control workers with counts below 20 million/ml. (38.0 percent vs. 4.3 percent) is statistically highly significant p less than 0.005). The difference in percentages of exposed vs. control workers with counts below 40 million/ml. (52.0 percent vs. 26.1 percent) is statistically significant at the 0.05 level.

Thus, when compared to the MacLeod control or to the control group in the California Cohort, those workers who used DBCP for 15 days or more had significantly lower sperm counts.

Texas Cohort. Seventeen citrus and vegetable farmers exposed to DBCP were studied. Three had vasectomies and were excluded. Six of the 14 remaining individuals (43 percent) had counts below 20 million/ml and eight (57 percent) were below 40 million/ml. Of the 9,000 MacLeod males, 18.1 percent) had counts below 20 million/ml, and 29.1 percent had counts below 40 million/ml.[54] These differences between the workers in the Texas Cohort and the MacLeod males is statistically significant—chi-squares=5.81 and 5.35; 1 df; p is equal to 0.025.

Finally, the EPA made an evaluation of sperm count data for workers at eight DBCP manufacturing facilities.[55] The companies themselves provided the data. Four companies, Dow-Midland, Shell-Denver, Shell-Mobile, and Occidental provided data on both exposed and on unexposed workers, and the inexperienced workers for each company were used as a control group for that company. The remaining provided data on only exposed males. One of these companies, Chevron, was excluded from the study because of the small number (5) of workers in the sample. Data for the remaining three companies was compared to the MacLeod data.

Of those four companies furnishing both data on exposed and non-exposed workers, the data furnished by Occidental showed that there was a statistically highly significant difference between Occidental's exposed and non-exposed workers. Forty of 91 exposed workers (47 percent) had counts below 40 million/ml compared to four of 35

[47] The study is found at EPA Ex. 8 (Ex. 1). Persons testifying to the study were Frank Davido, EPA Ex. 8; Tr. 371–402; Robert G. Heath, EPA Ex. 9; Tr. 403–423; and Dr. Jack D. Griffith, EPA Ex. 19; Tr. 1380–1483. This discussion of the study is compiled from these record references unless otherwise noted.

[48] The medical questionnaire is found in EPA Ex. 20.

[49] Tr. 1391, 1394.

[50] See EPA Ex. 8 (Ex. 1) at 13, Tr. 383–85, 1426–27.

[51] Mr. Heath gave the following explanation as to why the MacLeod data was considered a reliable control as follows (Tr. 419–20): These data from the 9,000 men studied by MacLeod are men from infertile marriages. So, if anything, these are men with sperm counts below the so-called norm. So our usage of the MacLeod distribution to compare with the exposed workers is in fact conservative * * *.

[52] EPA Ex. 13 (Ex. 2) at 14.

[53] The MacLeod data is adjusted to include azoospermic men. This made the comparison more conservative by increasing the number of males in the control with low sperm counts.

[54] The MacLeod data is adjusted to include azoospermic.

[55] The manufacturing facilities were Dow-Magnolia, Dow-Midland, Dow-Pittsburgh, Shell-Denver, Shell-Mobile, Chevron, Velsicol, and Occidental. EPA Ex. 9, Table 1. The study is explained in EPA Ex. 9 and in the testimony of Robert G. Heath, Tr. 410–16, 418–22.

unexposed workers (11 percent).[56] The data for Dow-Midland, Dow-Pittsburgh, and Shell-Mobile did not show any significant differences between exposed and unexposed workers.

Among the remaining three which were evaluated, sperm counts frequency distributions of exposed Dow-Magnolia and Velsicol workers revealed statistically highly significant differences from those of MacLeods' 9,000 males from infertile marriages. Fifty-three of 117 (45 percent) of the Dow-Magnolia workers and 12 of 24 (50 percent) of the Velsicol workers had counts below 20 million/ml, whereas 18 percent of MacLeod's males had counts below 20 million/ml. The data for the remaining company, Dow-Pittsburgh, was now shown to differ statistically from the MacLeod data.

The fact that sperm counts of exposed workers at only three facilities (Dow-Magolia, Velsicol and Occidental) of seven tended to be lower than the unexposed populations against which they were evaluated can not be considered contradictory based on the data provided. As Mr. Heath explained (EPA Ex. 9 at 14), these data revealed nothing about the intensity or duration of DBCP exposure for each set of workers and such information would be necessary to perform more than the broad evaluation of DBCP facilities presented here.[57]

Further evidence concerning the effects of DBCP on spermatogenesis, was obtained in connection with an examination of testicular biopsies taken from workers in the Occidental's AC Division who had been exposed to DBCP. The examination was done by Dr. Edward A. Smuckler, professor and Chairman of the Department of Pathology, University of California School of Medicine, San Francisco, California, at the request of Dr. Whorton and was an integral part of his 1977 Occidental Study.[58] Ten biopsies were performed of Occidental AC Division workers who had been exposed to DBCP over varying degrees of time. Dr. Smuckler testified that the biopsies tended to separate into three categories. The first consisted of three patients whose specimens showed normal or slightly decreased formation of sperm. Two of these patients had a history of only brief exposure to DBCP. The second group consisted of biopsies taken from two individuals with the longest history of exposure to DBCP and where ejaculation was without sperm. The third group of 5 patients comprised five biopsies from individuals with reduced sperm counts and histories of exposure to DBCP intermediate in duration between that of the other two groups. The specimens in this third group demonstrated moderate to marked dimunition of sperm formation. Spermatogenic cells were observed in only a minority of the seminiferous tubules and in the more severely affected individuals spermatogenic activity was limited to merely a few short segments of these tubles. Aside from changes in spermatogenic activity, Dr. Smuckler could find other consistent features within the three groups of testicular biopsies. Dr. Smuckler testified as follows as to the results of the study, EPA Ex. 21 at 4–5:

> From these observations we concluded that there seemed to be an arrested development from spermatogonia. None of the biopsies noted any degree of cell injury, the sustenticular cells were not abnormal, the residual spermatogonia were not abnormal. The principal feature was a reduction of the several cell types that develop from spermatogonia * * * We concluded from these studies that there seemed to be a correlation of exposure to DBCP during the manufacturing process with a reduction of spermatogenic activity in the individuals involved. We thought that the initial changes were not consistent with reversible ones, but the prolonged exposure seemed to reduce the spermatogonia within tubules. This suggestion came from observations on less involved workers and one who left the plant. We readily accept the fact that sampling problems are attendant upon these types of studies, nonetheless, it was our impression that DBCP effectively modified spermatic activity in men. This has been amply confirmed subsequently by studies of spermatogenic activity in field workers and applicators during processing of DBCP for environmental use (see more recent reports by Kahn).[59]

In addition to these epidemiological studies, there is also evidence in the record showing that DBCP causes adverse testicular effects in laboratory animals.[60]

4. DBCP is a Genetic Toxin

Dr. Dante James Picciano, a geneticist at the the Genetic Toxicology Center in Vienna, Virginia, and Adjunct Associate Professor of Genetics at the George Washington University, testified as the genetic toxicity of DBCP, and particularly its properties as a mutagen.[61] As Dr Picciano explained, mutagens are chemicals that are capable of adversely interacting with the genetic material (deoxyribonucleic acid, DNA) in the human organism or with genetic processes (chromosome movement in cell division). Mutagens are suspected of playing a role in the etiology of three major human health problems: hereditary defects, cancer and heart disease. First mutagens are believed to be responsible for a large part of the birth defects that occur in children. Approximately five percent of newborn babies have some type of demonstrable defect ranging from minor physical deviations to severe mental retardation. Second, mutagens are also thought to play an important role in the cause of human cancers. Recent studies have shown that about 90% of the chemicals that are capable of causing cancer in humans or animals are capable of causing mutations in one or more test system. This high correlation between carcinogenicity and mutagenicity is believed to be due to the fact that mutagens and carcinogens have a similar mode of biological reactivity with DNA. Finally, damage to DNA by mutagens has also been suggested as causing atherosclerosis, a type of cardiovascular disease with hardening of the arteries.

Dr. Picciano testified to several tests done with DBCP on bacteria to determine whether it induces gene mutations. A gene is the basic unit of inheritance, and consists of a segment of DNA that functions as a unit in the production of the cellular products. The first study, made by Herbert S. Rosenkranz (EPA Ex. 6 (Ex.1)) disclosed that DBCP interacted with bacterial DNA and led to the death of the organism. A test known generally as the "Ames Test" because it used strains of the bacterial specie *Salmonella typhimuruim*, was also made. This test revealed that DBCP in quantities as low as 0.4 induced "base system" mutations in the bacteria.[62] A dose response curve was obtained showing that the higher the concentration of DBCP, the more mutants were obtained.

Another Ames test study of DBCP was made by Arlene Blum and Bruce Ames. EPA Ex. 6 (Ex.2). In this study, DBCP was added to bacteria in the presence of a rat liver homogenate to duplicate the metabolic reactions that activate chemical mutagens in mammals and

[56] Occidental only furnished data showing counts above" or "below" 40 million/ml.

[57] It will be recalled that in Dr. Whorton's studies ere was demonstrated a direct relationship tween length of time of exposure to DBCP and igosperma. See EPA Ex. 13 (Ex. 1) at 1260, and 'A Ex. 13 (Ex. 2) at 14. The same was also shown the EPA's study.

[58] Dr. Smuckler's testimony is set out in EPA Ex. , and at Tr. 1518–1529.

[59] See EPA Ex. 21 (Ex. 1).

[60] EPA Ex. 7 at 4, 9–10. EPA Ex. 7 (Ex. 1).

[61] Dr. Picciano's testimony is found in EPA Ex. 6 and at Tr. 273–349.

[62] Base system mutations are a type of mutation in which one base of DNA of a gene is replaced by another base. This results in a different genetic, meaning being applied to the development of the cells affected by that gene.

man. This report also showed that in the presence of rat liver homogenate, DBCP was capable of inducing base system mutations in a dose-dependent manner.

A third Ames test study was made by Michael Prival, *et al.* EPA Ex. 6 (Ex.3). In this case the investigators studied the effects of DBCP in both the presence and absence of a rat liver homogenate. The DBCP alone in dosages of both .01 and 0.5 microliters induced base-substitution mutations, and in a dose-related manner. In the presence of the rat liver homogenate, 0.01 microliters of DBCP induced base-substitution mutations in the bacteria. Higher concentrations of DBCP were toxic.

A fourth Ames test study was done by R. W. Biles, *et al.* EPA Ex. 6 (Ex.4). In this study, the investigators tested the hypothesis that epichlorohydrin present in technical grade DBCP as a stabilizer accounted for the mutagenicity of DBCP. The researchers found that epichlorohydrin probably accounted for almost all the mutagenicity of technical grade DBCP in tests performed without metabolic activation of the chemical. Pure DBCP without metabolic activation was found to be a much weaker mutagen than technical grade DBCP containing epichlorohydrin. Pure DBCP contains no epichlorohydrin; however, it was found to be a potent mutagen when metabolically activated. The authors noted that, "[b]ecause of the mutagenicity of pure DBCP after metabolic activation, it would make little difference pragmatically whether or not the stabilizer epichlorohydrin was removed." EPA Ex. 6 (Ex.4) at 307.[63]

Studies were also made to determine whether DBCP causes chromosomal mutations. Chromosomes are units in a cell made up of DNA molecules in close association with specific protein molecules. For each animal species, there is a characteristic number of chromosomes, which are found in the nucleus of each somatic, or body cell in that animal. For instance in man there are 46 chromosomes, or 23 pairs (22 matched pairs and one pair of sex chromosomes). However, the gametic or sexual cells (egg or sperm) only contain one half the number of chromosomes as the somatic cells; in man, this number is 23. In this way, when the egg and sperm unite during the reproductive process known as fertilization, the correct number of chromosomes will result. That is, in humans, the sperm (bearing 23 chromosomes) unites with the egg (bearing 23 chromosomes) to form a new cell which now has 46 chromosomes, or 23 pairs. This single cell (zygote) will develop into an embryo which carries a unique combination of half maternal and half paternal genetic information. Thus, the somatic cells of the resulting offspring will contain the same number of chromosomes as either parent.

One study by Robert W. Kapp, Jr., *et al.* (EPA Ex. 6 (Ex. 5)) (reported evidence that DBCP was toxic to the gametic or sexual cells of humans. The test was grounded upon the fact that human sperm cells contain 22 autosomes (non-sex chromosomes) and one sex chromosome. The sex chromosome can be one of two types, and X or a Y. Half the sperm cells should contain an X chromosome and the other half a Y chromosome. If an X-bearing sperm cell fertilizes an egg, a female is produced; if a Y-bearing sperm cell fertilizes an egg, a male is produced. The study investigated the presence of sperm cells containing two Y chromosomes (YFF) instead of one Y chromosome (YF). The analysis of the Y sperm was made by staining semen samples with a fluorescent dye. Studies have shown that when these stained samples are exposed to the proper light source and examined under a microscope, sperm with one Y chromosome (YF) will contain one fluorescent body while sperm with two Y chromosomes (YFF) will contain two fluorescent bodies. The presence of a YFF gametic cell, therefore, indicates the non-disfunction of the Y chromosome.

In the Kapp, *et al.*, study, evaluation of semen samples from 15 men without any known exposure to DBCP revealed an average YF frequency of 41.5%, and an average YFF frequency of 1.2%. Similar evaluation of semen samples from 18 workmen exposed to DBCP for six to eighteen months showed an average YF frequency of 41.8%, and a YFF frequency of 3.8%. The YFF frequency in the DBCP-exposed workmen was more than three times that of the nonexposed men. Statistical analysis of these results on an individual basis showed that all 15 nonexposed men had YFF values within the normal range, 0–2%.

The exposed workers studied were workers at a Dow plant who were involved in the production of DBCP. The time-weighted average of their exposure was approximately 0.6 ppm. Tr. 274–77.

As Dr. Picciano pointed out, this study by Kapp, *et al.* discusses a form of reproductive toxicity of DBCP which is in addition to DBCP's reported action in decreasing sperm counts. That workers exposed from 6 to 18 months had an increase in YFF sperm was another indication of the ability of DBCP to reach and interact with human gonadal tissue. The fact that the YFF sperm survive and are capable of fertilization is shown by the existence of XYY individuals (males with 47 chromosomes rather than 46, the extra being a supernumerary Y). XYY males occur in the human population with a frequency of about one in 1,000 births—a relatively high frequency. In addition, Dr. Kapp explained that it is generally held that an agent which increases the frequency of sperm with extra Y chromosomes will increase the frequency of sperm with abnormal numbers of autosomes as well (additional types of nondisjunctional errors). Clinical studies have shown that some 0.4% of all live births display numerical chromosome errors usually manifested as physical and/or mental retardation. it is also estimated that over one-third of early spontaneous abortions contain similar aberrations.

The final study on DBCP's effect on chromosomal mutations is a doctoral dissertation done by Dr. Robert Kapp in 1979. Dr. Kapp studied DBCP's ability to induce chromosome mutations in rats, and extended his previous study (EPA Ex. 6 (Ex. 5)), on DBCP chromosomal mutations in exposed workmen.

In his animal study, Dr. Kapp used technical grade DBCP manufactured by Shell Chemical Company. An analysis of the material disclosed that it contained 96% DBCP, 0.7% allyl chloride, 0.8% epichlorohydrin and 2.5% related halogenated hydrocarbons. Three groups of male rats of 20 rats each were respectively administered doses of DBCP at 0.73, 7.3 and 73 mg/kg of body weight for five consecutive days. The highest dose level was the highest non-toxic dose and the low dose approximated the estimated human inhalation exposure based upon a level of 0.5 ppm.[64] DBCP mixed in corn oil was fed by gavage once a day for five consecutive days. A control group of 10 rats was administered corn oil without DBCP.

Approximately 24 hours after the last injection, each rat received an intraperitoneal injection of colchicine to arrest the cells at metaphase (a step in cell division). The cells were collected, processed, and slides prepared. The prepared slides were stained with Giemsa stain and analyzed via high power light microscopy. Fifty cells were examined from each rat and scored for the presence of different types of structural chromosome mutations: chromatid breaks, markers, severely

[63] DBCP is subject to metabolic activation in humans and it is assumed that the carcinogenic effect of DBCP in humans is due to some unknown metabolite. See Tr. 1893, 1922–23.

[64] Dr. Kapp assumend that a level of concentration in the ambient air of 0.5. ppm would result in the average 70 kilogram (154 pound) worker being exposed to 0.244 mg/kg of DBCP per 6-hour period. EPA 6 (Ex. 6) at 17–18.

damaged cells, and abnormal cells. Statistical analysis of the bone marrow (somatic tissue) results indicated elevated frequencies of chromosomal aberrations. In 500 cells examined from the ten rats not exposed to DBCP, there were 1.6% abnormal cells, 0.6% cells with chromatid breaks, 0.2% cells with chromosome breaks, 1% of cells with marker chromosomes, and no severely damaged cells. In 800 cells examined from the sixteen rats exposed to 73 mg/kg of DBCP, there were 24.9% abnormal cells, 5.5% cells with chromatid breaks, 0.6% cells with chromosome breaks, 17.8% of cells with marker chromosomes, and 4% severely damaged cells.

Analysis of the spermatogonia (gonadal tissue) results indicated similar elevated frequencies of chromosomal aberrations. In 500 cells from ten control rats, there were 3.2% abnormal cells with chromosome aberrations, 0.8 cells with chromatid breaks, 0.2% cells with chromosome breaks, 2% of cells with marker chromosomes, and no severely damaged cells. In the 800 cells from the 16 rats given 73 mg/kg of DBCP, there were 34.6% abnormal cells, 7.6% of cells with chromatid breaks, 0.5% of cells with chromosome breaks, 24.4% of cells with marker chromosomes, and 0.6% severely damaged cells. A statistical analysis was also performed to ascertain whether or not there was a significant linear dose-response relationship between the dose administered to the animals and the number of aberrant cells. Both the bone marrow and spermatogonia data indicated the existence of a significant dose-response relationship where the number of aberrant cells increases as the dose increases. A significant correlation between the spermatogonia and the bone marrow cells was found from which Dr. Kapp inferred that changes parallel each other in the two cell lines. Therefore, the administration of DBCP orally to rats in concentrations as low as 0.73 mg/kg/day for five days increases the incidence of chromosome mutations in both bone marrow and spermatogonia as indicated by the increasing incidence of marker chromosomes.

In sum, studies have shown that DBCP can induce chromosomal mutations in both somatic and gametic cells. Dr. Picciano explained the significance of these mutations as follows (Tr. 302–303):

> [M]utations to somatic or body cells are believed to be involved in the cause of cancer. So that if we are insulted with the mutagen, for example, DBCP, we would have potential to develop cancer.
>
> Mutations to somatic cells are also believed to be involved in aging and heart disease. Now, mutations to the gametic cell—well, the point is, the individual is affected and it stops right there.
>
> That's of concern to the individual, period. Mutations to the gametic cells can be transferred to future generations *ad infinitum*, and there can be a geometrical progression of the mutation for future generations, ranging from small, minor malformations to very severe mental and physical defects in children. And this can be transmitted on indefinitely, so they're of great concern to the future of mankind.

In the second part of the study, Dr. Kapp extended his original report of the ability of DBCP to induce numerical mutations in exposed workmen. In his original study, Dr. Kapp used the results of sperm analyses from 15 non-exposed men as a basis of comparison for the 18 DBCP-exposed workers. In his Dissertation, Dr. Kapp used the results of sperm analysis from 45 nonexposed men as the basis of comparison. Of the nonexposed men, 43 were within the normal range for YFF sperm (0–2%); only two men had YFF values greater than 2%. Sixteen of 18 DBCP-exposed men had YFF values greater than 2%. Statistical analysis of these data on an individual basis now gave a Chi square value for one degree of freedom of 40.88 as compared to a value of 22.5 in the earlier report. By increasing the size of his comparison group, Dr. Kapp increased the statistical significance of his results.

Dr. Picciano concluded that the results presented in the reports discussed above clearly demonstrate that DBCP is an active biological compound and is a potent genetic toxin capable of inducing mutations in exposed organisms, including humans. In his opinion, microbial assays have demonstrated the potential of DBCP to induce gene mutations; mammalian assays have shown its potential for causing chromosomal mutations in both somatic and germinal cells—indicating both cell to cell transmission, as well as organism to organism transmission of mutations. In addition, the presence of YFF sperm in human males exposed to DBCP was found to be consistent with the experimental data which indicate that DBCP can reach the male gonad in a metabolically active form and can interfere with spermatogenesis. Finally, the observed biological activity of DBCP was found to be consistent with the conclusion that DBCP is an animal and human carcinogen. [65]

[65] EPA Ex. 6 at 11.

5. The Bioassays and Epidemiological Data Have Not Been Shown To Be Unreliable

The data discussed above consisting of animal bioassays and human epidemiological studies amply satisfies the EPA's burden of coming forward with evidence to show that DBCP is highly toxic to humans. The burden of demonstrating that DBCP is, in fact, non-toxic is upon those favoring continued registration, and they have failed to meet this burden.

Only one laboratory study was presented to demonstrate the asserted non-toxicity of pure DBCP. The study was conducted by Michael Weinstein while a senior in college for his senior thesis, using DBCP supplied by Amvac which was not its commercial grade but had been specially refined. [66] In this study, Weinstein purported to show that pure DBCP administered in the drinking water of rats over a 75-day period had no effect on the fertility of the rats. For purposes of the study, Mr. Weinstein put the DBCP in the water which the rats drank. [67] Three levels of concentration were used in the drinking water. The drinking water for a group of six rats had a concentration of DBCP equivalent to 10 mg/kg of body weight per day. The drinking water for another group of six rats had a concentration of DBCP equivalent to 5 mg/kg/day, and the drinking water for five rats had a concentration of DBCP equivalent to 1 mg/kg/day. Another group of five rats were used as a control. [68]

The study reported by Mr. Weinstein is at a much lower professional level than those relied on by the EPA. Only average data is given, and no individual data is given to show how the average figures were derived. Mr. Weinstein asserted that his dosages were roughly equivalent to 50, 25 and 4 ppm. Amvac Ex. 10 (Ex. 1) at 9. He thus professed to find no mortality or adverse testicular effects at dosages 4 times those used by Torkelson's study. In his direct testimony, Mr. Weinstein claimed to contradict Torkelson's findings by finding no adverse testicular effects at dosages ten times greater than 5 ppm. Amvac Ex. 10 at 3. In fact, these comparisons are highly questionable. When the proper conversions are made

[66] Mr. Weinstein's testimony is found in Amvac Ex. 10, and at Tr. 3154–3207. His study is an exhibit to Amvac Ex. 10. The DBCP used was 99.7% pure, and purer than the technical grade commercially sold by Amvac. Tr. 3945.

[67] Mr. Weinstein referred to his method of administration as "oral intubation" but there was no controlled feeding by gavage. Tr. 3171.

[68] The number of rats used was much smaller than those used in the NCI and Dow-Hazleton studies. Tr. 3201, EPA Ex. 1, p. 5; EPA Ex. 4, p. 2.

for comparing exposure by inhalation, which was the route of exposure in Torkelson's study, to Weinstein's administered dosage, Weinstein's highest dose level is three times smaller than Torkelson's 12 ppm in an equivalent dosage.[69] In contrast, Mr. Weinstein neither in his study nor his testimony showed how he calculated that his dosages were "roughly equivalent" to 50, 25 and 4 ppm. In view of the sparseness of the information furnished in the study and Mr. Weinstein's own lack of scientific expertise, little weight can be accorded the study.

A principal criticism advanced by the registrants to the scientific studies relied on by the EPA is that they do not exclude the possibility that the toxic agent was not DBCP but allyl chloride or epichlorohydrin which was present in the DBCP, or possibly some other chemical which the test population had been exposed to. Dr. Neil S. Levy, a pharmacologist, and Dr. Earl Flowers, an industrial hygienist so testified.[70] Dr. Dwight Warren, a physiologist, also testified about his theory that the adverse testicular effects noted in the DBCP tests could have been caused by allyl chloride or epichlorohydrin in the DBCP being tested.[71]

In the Dow-Hazleton feeding study, the test material contained no epichlorohydrin. EPA Ex. 24 at 7, n. 4; Tr. 1869. Consequently, the toxic effects in that study could not be attributed to epichlorohydrin. The DBCP used by Dr. Van Duuren in his studies was redistilled, and an analysis taken from the same batch of DBCP and distilled by the same procedure showed that it contained only 0.06% epichlorohydrin and 0.06% allyl chloride.[72] Dr. Van Duuren considered it highly unlikely that either allyl chloride or epichlorohydrin could have been responsible for the tumors he observed in his experiments with DBCP.[73]

Dr. Albert also testified that a comparison of the NCI study on allyl chloride with the Dow-Hazleton feeding study with DBCP demonstrated that the tumors found in the DBCP study cannot be attributed to the small amount (3.4%) of allyl chloride contained in the DBCP test material.[74] The NCI allyl chloride study was conducted at about the same time and under the same procedures as the NCI study on DBCP.[75] Dr. Albert made a comparison of the carcinogenic response from DBCP in the Dow-Hazleton study, where DBCP was administered in the diet, with the carcinogenic response from the allyl chloride which was administered by gavage in the NCI study. Thus, in the Dow-Hazleton study, the high-dose fed to the rats was 2 mg/kg/day 7 days a week for 104 weeks.[76] In the allyl chloride study, the low dose fed to the rats was 55 mg/kg/day for 5 days a week for 78 weeks.[77] Adjusting the allyl chloride dosage to make the dosage equivalent to the dosage that would have been given over the same span as the DBCP, this was equivalent to 30 mg/kg/day.[78] The DBCP dosage of 2 mg/kg/day resulted in a statistically significant number of rats having at least one of 3 tumor types (liver, kidney or stomach). In contrast, none of the rats in the allyl chloride study experienced tumors. When a similar comparison is made between the low dose group of mice in the NCI allyl chloride study and the high dose group of mice in the Dow-Hazleton DBCP study, the data with respect to stomach tumors (the only tumor found in the Dow-Hazleton study), shows a large proportion of stomach tumors occurring in mice in the Dow-Hazleton DBCP study, and only a very small proportion of such tumors in the mice in the allyl chloride study.[79] As already noted, the dosages in the allyl chloride study were much higher than the dosages in the DBCP study—30 mg/kg/day of allyl chloride compared to 2 mg/kg/day of DBCP in the rat studies and 80 mg/kg/day of allyl chloride compared to 2.7 mg/kg/day of DBCP in the mice study. Assuming then that the DBCP used in the Dow-Hazleton study contained 3.4% allyl chloride, then the dose level in the allyl chloride study would be at least 400 times greater than that contained in the NCI allyl chloride study.[80]

Dr. Albert also considered it unlikely that the trace amount of epichlorohydrin (0.7%) in the NCI inhalation study in which the animals were exposed to 3 ppm of DBCP could have accounted for the carcinogenic results found there. This conclusion is supported by information reported to the NCI of an inhalation study done at New York University for which rats were exposed to epichlorohydrin for their lifetime at doses of 10 ppm and 30 ppm. As reported to Dr. Albert, only 1% of the rats in the 30 ppm group developed nasal tumors and none developed cerebral tumors; while in the 10 ppm, none of the rats developed cerebral or nasal tumors. In contrast, a large proportion of the rats exposed to 3 ppm DBCP developed both nasal and cerebral tumors.[81]

Finally, it is to be noted that Dr. Whorton, in his epidemiological studies, found no positive exposure relationship between epichlorohydrin and the existence of sperm count depression.

It is found, therefore, that the toxic responses observed in the studies relied on by the EPA cannot be attributed solely to the presence of small amounts of allyl chloride or of epichlorohydrin in the DBCP tested.[82]

Dr. Albert, however, did not dismiss the possibility that the carcinogenic responses observed in the animal studies could be accounted for in some degree by a synergistic effect produced by the combination of DBCP and allyl chloride. The evidence is inconclusive but even if there was a synergistic effect, this would not change his conclusion that DBCP was a potential carcinogen in humans. As he testified [Tr. 1879–80]:

Q. Isn't it also true that the effects observed in the animal studies upon which you rely in your risk assessment could be due to synergism between DBCP and [allyl chloride]?

[69] See Tr. 4874–4881. The concentration of DBCP in ppm in the air must be converted to mg/litre of air and then the amount of air the rats are likely to inhale must be calculated. Mr. Weinstein's study is also unclear as to how much DBCP the rats actually ingested in their drinking water over the study period. See Amvac Ex. 10 (Ex. 1) at 7–8; Tr. 3192–3200.

[70] Dr. Levy's testimony is found in Gowan Exhibit 4 and Tr. 2350–2764; Dr. Flowers' testimony is found in Amvac Exhibit 18, and Tr. 4417–4534, 4857–5049.

[71] Dr. Warren's testimony is found at Amvac Ex. 8, and Tr. 2772–2832.

[72] *Supra* at n. 18.

[73] See EPA Ex. 2 at 5–8. There was no evidence in repeated skin application tests conducted with allyl chloride and epichlorohydrin that they produced tumors in the lung or forestomach as did DBCP. In a feeding test conducted with allyl chloride, Dr. Van Duuren found the evidence suggested only weak carcinogenic activity in the forestomach after feeding to mice, compared to the higher incidences of tumor found with DBCP in his repeated skin studies.

[74] See EPA Ex. 24 at 7–11.

[75] The NCI allyl chloride study is in evidence as Gowan Ex. 1.

[76] The dosage is the adjustment to the nominal rate of 3 mg/kg/day to allow for volatilization. See *supra*, n. 21.

[77] Gowan Ex. 1 at 9. The males were actually fed a slightly higher dose of 57 mg/kg/day.

[78] The formula is 55 mg/kg/day × 5 days per week divided by 7 days per week × 78 weeks divided by 104 weeks = 30 mg/kg/day. See EPA Ex. 24 at 10.

[79] See EPA Ex. 24 at 9.

[80] The adequacy of NCI allyl chloride study was questioned because of the poor survival in the high dose treatment group. Gowan Ex. 1 at 53. Dr. Albert, however, used the low dose group for comparison which did have an adequate survival rate. Tr. 1902.

[81] EPA Ex. 24 at 12–12a, 23.

[82] This conclusion was not rebutted by Dr. Flowers' testimony that data derived from a NIOSH criteria document on epichlorohydrin clearly shows that the epichlorohydrin in the DBCP administered to the rats in the NCI gavage study could have accounted for the tumors. Amvac Ex. 18 at 13–14. The reliability of the data relied upon was questioned by the author who conducted the study. Tr. 4511–14. There are also other reasons why the testimony was unpersuasive. See *e.g.*, Tr. 4515, 4519, 4527–29.

A. [Dr. Albert] It's possible. There is no evidence one way or another.

Q. Isn't it also true that it could be due to a synergism between DBCP and epichlorohydrin?

A. It's possible.

Q. Or synergism between DBCP and both allyl chloride and epichlorohydrin, if both are present?

A. I think it wouldn't make any difference in terms of the risk assessment, because anything that is susceptible to being potentiated by materials in the environment, has got to be a nasty actor in its own right.

Q. Well, wouldn't it affect the numbers that go into the risk assessment?

A. Not necessarily. It would certainly raise some issues about the interpretation of these numbers. One might very well take the approach, which we didn't, in our risk assessment, I would emphasize—that if, indeed, the DBCP can be potentiated by any or several of these contaminants, that go along with it, that it certainly could be potentiated by a variety of chlorinated organic materials in the environment, of which there are plenty, as well as other materials.

With respect to the adverse testicular effects observed to be caused by DBCP, Dr. Dwight Warren suggested these could have been attributable to the metabolism of allyl chloride or epichlorohydrin in the body into a chemical, alphachlorohydrin, which studies have shown can adversely affect sperm, primarily sperm which has passed from the testes into the epididymis (the excretory tract beyond the testes). Dr. Warren's suggestion was simply put forth as a plausible alternative explanation for the adverse testicular effects found with respect to DBCP.[83] He first heard about DBCP four weeks prior to his testifying. Tr. 2776. The testing to show that allyl chloride will, in fact, convert into epichlorohydrin upon interaction with the enzyme monooxygenase has not been performed. Tr. 2800. Further, epichlorohydrin is only one possible metabolite of allyl chloride. Tr. 2801. Likewise, there has been no testing to show that, in fact, the epichlorohydrin does, in turn, metabolize into alphachlorohydrin. Tr. 2804.

Contrasting to Dr. Warren's carefully worded conclusion that the adverse testicular effects attributed to DBCP could be attributed instead to the presence of allyl chloride and epichlorohydrin is the more persuasive testimony of Dr. Whorton and Dr. Smuckler in connection with their investigation into the testicular effects of DBCP. These studies have already been discussed. *Supra.*, at 22–34, 39–40.

Finally, even if it were true that some of the effects attributable to DBCP could also be explained in whole or in part by the presence of epichlorohydrin or allyl chloride in DBCP, it has not been demonstrated that DBCP is presently commercially available in a sufficiently pure form to negate those risks. Amvac claims to produce a DBCP which is purer than the product which had hitherto been available from such manufacturers as Dow or Shell Chemical Co., or even which is presently available from other manufacturers.[84] Amvac, however, refused to give details about its source of allyl chloride or its manufacturing process, without which details, the merits of its claim cannot be adequately evaluated.[85] Nor can the claim be verified from the current registered labels for Amvac.[86]

The reliability of the epidemiological and animal studies was also questioned by Dr. Flowers and Dr. Levy.

As to Dr. Flowers, it appeared that his conclusions were governed more by his reluctance to accept any evidence indicating that DBCP is toxic to humans than upon any sound scientific evaluation of the data. Thus, Dr. Flowers appears to have accepted uncritically the highly questionable Weinstein study, and particularly the conclusion that Weinstein's dosages were four times those used by Torkelson.[87]

Dr. Flowers also questioned Dr. Whorton's study stating that the workers studied were potentially exposed to other chemicals besides DBCP. Amvac Ex. 18 at 10–11. Nevertheless, Dr. Flowers was willing to draw the firm conclusion that epichlorohydrin was carcinogenic from the NIOSH documents relating to epidemiological exposure studies on epichlorohydrin, even though information was not available for most of the workers on their smoking history or the extent of exposure to other chemicals. Amvac Ex. 18 (Ex. 4) at 3; Tr. 5015–5031.

The deficiencies which Dr. Levy claimed to find in the conduct of the NCI gavage study did not prevent sound scientific judgments being made about the possible carcinogenicity of DBCP.[88] Dr. Levy would assume too much from the fact that that the procedures for conducting animal studies were subsequently changed to strengthen the statistical evaluation of these studies.[89] The study was considered reliable enough to be approved by the Data Evaluation Group, who concluded that it had been done reasonably well. Tr. 135. The fact that the procedures for conducting bioassays were changed after the NCI intubation study would be more relevant if a bioassay under the new procedures had been conducted and indicated different results. No such study was introduced, however, and the procedures followed in the NCI study were sufficiently accurate to permit valid judgments to be drawn about the potential human carcinogenicity of DBCP. Tr. 138. As Dr. Albert testified (Tr. 1918):

[83] Dr. Warren did not rule out the possibility that DBCP could also have caused the testicular effects. Tr. 2786. Indeed, it has similarly been hypothesized that DBCP may metabolize into an expoxide which would affect the testes. EPA Ex. 21 (Ex. 1) at 457.

[84] See testimony of Dr. Lester Friedman, Amvac Ex. 15.

[85] See Tr. 3758–68; 3777–3872. Amvac refused to supply the information even under an offer to give the information confidential treatment. Tr. 3781; 3871–3872. The Amvac DBCP used in the Weinstein test was not the commercial grade but a purer product, *supra*, at 50. Thus, despite Amvac's claim to the contrary, this material connot be considered as representative of Amvac's commercial product, and it is, accordingly, impossible to tell to what extent the DBCP tested in Amvac Ex. 15 (Ex. 1) is also "representative" of Amvac's commercial grade.

[86] Amvac is currently producing Nematocide 17.1 and Nematocide EM 15.1. Tr. 3928. These labels show that in addition to DBCP, the EM 15.1 contains 2.8 percent other halogenated C_3 compounds, and the 17.1 contains 3.0 percent other halogenated C_3 compounds; a classification which includes allyl chloride and epichlorohydrin. Tr. 3753–54; EPA Exs. 28, 29. The identity of the actual compounds is not specified. It is to be noted that the same Nematocide 17.1 product has also been manufactured for Amvac in Mexico, as recently as January 1979. Tr. 3916, 3927.

[87] See Amvac Ex. 18 at 15–16; Tr. 4488. Dr. Flowers later attempted to justify this conclusion by the assumption that all of the DBCP administered by Weinstein was retained in the rat but only one-fourth of the DBCP inhaled in the Torkelson study was retained. Tr. 5034–35. This calculation, which was not part of Dr. Flowers' direct testimony, was made by converting the inhalation LC_{50} concentrations (amount of concentration that is lethal to 50 percent of the test population), to mg/m^3, and comparing this figure with the oral LD_{50} (amount of dosage that is lethal to 50 percent of the test population) found by Torkelson. He then made the assumption that since the LC_{50} so converted was about three times greater than the LD_{50}, there was only 5 to 10 percent retention of the 12 ppm inhaled by the Torkelson rats, while all the DBCP ingested by Weinstein's rats in their drinking water was retained. Tr. 5033–41. The comparison drawn seems to have little scientific validity in the absence of more persuasive evidence than Dr. Flowers was able to cite. It is to be noted that the Carcinogen Assessment Group separately evaluated the risks from ingestion and from inhalation. EPA Ex. 24 at 18–25.

[88] Dr. Levy was concerned about the possibility that there was a mix-up in untreated controls because the untreated control rats for DBCP were also used as untreated controls for other chemicals being tested. Gowan Ex. 4 at 4. There is nothing in the design of the study showing that this actually occured or that it was more than speculation on Dr. Levy's part.

[89] See Tr. 130, 137. A larger control group is now set up for each test compound. The test animals for each compound being tested are kept in a separate room. Greater attention is paid to the number of tissues read histopathologically. The number of test animals, however, remains the same.

Question. Does the failure of a study to comply with good laboratory practices, as that term has been used in questions to you, affect the usefulness of the study for evaluation of carcinogenicity?

Answer. (Dr. Albert.) Well, if the study is negative, its reliability is markedly diminished, if there are serious flaws in its conduct. If the study is positive, there certainly can be flaws in it, but they don't necessarily detract from the validity of the study, unless there is something about the study, which would suggest that the positive results are spurious.

Dr. Levy would apparently not disagree with this general statement. See Tr. 2381, 2382. He simply disagreed with Dr. Weisburger and Dr. Albert on the interpretation to be given to the evidence of carcinogenicity in the NCI study, and in the other studies of DBCP. His testimony, however, on the alleged deficiencies in the data is so full of inaccuracies and unsupported conclusions as to make it of little value.[90]

6. The Quantitative Risk Assessment of Carcinogenicity of DBCP

Based upon the laboratory studies showing DBCP to be carcinogenic in laboratory animals, the Cancer Assessment Group of the EPA made a quantitative assessment of the risk presented to humans by DBCP. The purpose of the assessment was to provide the agency with a *rough* approximation of the risk that persons exposed to DBCP will contract cancer.[91]

The risk assessment model used by the Carcinogen Assessment Group was explained by Dr. Albert. EPA Ex. 24 at 120–26. It is the "one hit" extrapolation model which is based on the concept that a tumor can be induced after a single susceptible target or receptor has been exposed to a single effective dose unit of a substance. For low dose levels, the model is well approximated by a simple linear model in which the probability of an individual's contracting cancer is directly proportional to his or her exposure. The dose is expressed in terms of the amount actually ingested rather than attempting to estimate the concentration of the ultimate carcinogen at the site of action, since the identity of the ultimate carcinogen, its concentration at the site of action, and the location of the site is seldom known. The assumption is that, regardless of the dose level, the same (unknown) fraction of the administered compound interacts with the cellular site of action.

Two separate assessments of risk were made, an assessment of the risk from ingesting DBCP-contaminated water and food, and an assessment of the risk from inhaling DBCP vapors.

To determine the risk from ingesting DBCP-contaminated food, the high dose (2 mg/kg/day) in the DBCP male rat group in the Dow-Hazleton feeding study was used because it was found to be the most sensitive group in the study. The carcinogenic potency of a dose of DBCP to humans over a lifetime was then extrapolated from the data showing the potency of the high dose in laboratory animals in their lifetime.[92] The carcinogenic potency for humans so determined was then used to estimate the risk that a specific dose would result in cancer over the individual's lifetime. As previously noted, the model assumes that the risk of cancer increases directly with the size of the dose. At the same time, because of great variability among individuals biologically, and in their environmental and dietary exposure and other modifiers, no effort was made to predict a no-effect level.[93]

Thus, it was determined that if a person ingested foods in the amount of 14,490 mg per kg. of body weight per day for a year from eating foods containing residues of DBCP, the individual's chance of getting cancer over a lifetime would be approximately one in ten million (1.062×10^{-7}). The estimated ingestion of 14,490 mg/kg/day is based on an estimated residue of 10 ppb in each of the foods eaten and the estimated consumption of each food in the average human diet. See EPA Ex. 17 at 9–10.[94] It was also determined that if a person drank water containing 10 ppb for a year, his or her chances of getting cancer would be approximately two in one million (2.09×10^{-6}).

For determining the individual lifetime cancer risk from inhalation of DBCP, data from the NCI inhalation study was used. In this study, a statistically significant number of tumors (nasal, cerebrum or both) were found in all the DBCP-exposed groups, male and female rats and mice. The most sensitive species, male rats, provided the basis for estimating the individual lifetime risk of cancer for humans.[95] Using the one-hit model procedure, it was determined that if exposed to 10 ppb for 1,000 hours, an individual's chances of contracting cancer over his lifetime are approximately two out of 100,000 (2.10×10^{-5}).[96]

How these figures translate into the actual number of humans contracting cancer from DBCP in a year would depend on how many persons were exposed to DBCP, and what their exposure was.[97] A person exposed to DBCP in his drinking water and food and in the air he breathes would stand a greater chance of cancer than a person who only eats food containing DBCP residues. The probabilities of cancer, however, appear sufficiently great, particularly if a person is exposed to DBCP from all sources, to make DBCP an extremely hazardous pesticide. When the risk of cancer is added to the uncalculated but nevertheless likely risk of sterility and mutagenic effects, it must be concluded that the risk of imminent harm to humans, during the year or possibly two it is assumed will be required for the cancellation proceedings fully justifies banning DBCP, unless people can be adequately protected against exposure to it, or unless it can be shown that the environmental, social, and economic costs of banning it are so great as to outweigh the clear risk to human health.

It is to be noted finally that Dr. Flowers questioned the carcinogenic risks estimated by Dr. Albert. It was Dr. Flowers' contention that the risk estimate suffers from the defect that it does not adequately evaluate the likelihood that larger doses of DBCP ingested at one time are more toxic than small doses administered over a long period of time, and that, indeed, small doses may not be toxic at all because they are eliminated from the body through breathing or excretion in the urine. This theory, however, appears to be simply speculation and without any real support in the data which Dr. Flowers claims to have relied on.[98] The

[90] See *e.g.*, Tr. 2410, 2443–47, 2480–2505, 2531–32, 2552–55, 2599–2602, 2607–09, 2616–18, 2639–40, 2650–69, 2686–89.

[91] The risk assessment does not attempt to analyze the risk of spermatogenic effects in males or mutagenic effects in people exposed to DBCP.

[92] Sixteen of the eighteen animals or 0.89, had at least one of three tumors, a tumor of the kidney, liver, or stomach. This proportion was used to calculate the carcinogenic potency for rats according to the one-hit model. EPA Ex. 24 at 19.

[93] See EPA Ex. 24 (Ex. 2) at 39878.

[94] The foods included are fruits, vegetables, berries, and grapes and cottonseed oil (included in margarine). These are all crops which are currently treated with DBCP and the estimated exposure takes into account the percent of each crop treated. The residues are derived from residue studies by the California Department of Food and Agriculture which are discussed below. EPA Ex. 17 at 9–10.

[95] Out of forty-nine male rats exposed to 3 ppm of DBCP, thirty-nine, or 80 percent had at least one nasal or cerebrum tumor. There were no tumors out of the control group of 50 male rats. EPA Ex. 24 at 23.

[96] EPA Ex. 24 at 25.

[97] See *e.g.*, EPA Ex. 24 (Ex. 7) (calculated annual risk of cancer in Table 2).

[98] Dr. Flowers assumed, although there was no scientific studies to support the assumption, that DBCP would pass through a rat's biological system without being metabolized. Tr. 4938. The Southern Research Institute (SRI) distribution study relied on by Dr. Flowers was not considered by the Carcinogen Assessment Group because the study

Footnotes continued on next page

one-hit model used to evaluate the carcinogenic risk presented by DBCP, while admittedly providing only a rough estimate, appears to be in accord with current scientific knowledge about the nature and characteristics of carcinogens.[99] Since human life is at stake, the model and the underlying assumptions should be followed, except on a persuasive showing that they are inapplicable. Dr. Flowers has not made that showing here so far as DBCP is concerned.

B. The Risk of Exposure

Notwithstanding that DBCP is highly toxic to humans, the risk of harm would be minimal if people were shielded from exposure to it. The indicated routes of exposure are by inhalation of DBCP vapors, dermal contact with DBCP in liquid form or in liquid solution, and ingestion in food or drinking water.

The starting point for determining exposure is the application of DBCP in the field. Protection against exposure to DBCP in plants in which it is manufactured or formulated has been taken care of by standards promulgated by the Occupational Safety and Health Administration of the Department of Labor.[100] Transportation of DBCP from the plant to the user has not been shown to be a problem in this case.

DBCP is applied basically by two different methods. One method is by tractor-shank injection. Under this method, DBCP, either technical grade or in a formulated solution, flows from a tank on the tractor down through tubing into a shank tube which is attached to the trailing edge of a metal chisel or coulter affixed to the rear of the tractor. The chisel is inserted the desired depth into the ground and DBCP flows out the shank tube into the furrow in the ground cut by the chisel as it is drawn by the tractor. The furrow is then covered over. The actual equipment can vary.[101]

In the water-run method, DBCP is added to irrigation water or applied by water and allowed to soak into the ground.[102]

1. The Ambient Air Exposure and Food Residue Studies

In 1978 and 1979, following the suspension of DBCP use in California in August 1977, the California Department of Food and Agriculture (CFDA) conducted several field studies with the tractor-shank injection and irrigation methods for applying DBCP. The objectives of the study included determining levels of DBCP in the air both during and after application, determining whether residues on various treated crops occurred, determining levels of DBCP in the soil following application, and determining levels of DBCP in treated irrigation water.

The design and conduct of these studies are spelled out in detail in Dr. Maddy's testimony.[103] Briefly, the studies and the results were as follows:

The first study was entitled "Safety Study Concerning Application of 1,2-Dibromo-3-Chloropropane to Soil by Tractor-Mounted Shank Injection and Furrow-Irrigation Methods" (ACF-59-534), and was conducted in Ventura County, California in June 1978. Two ten-acre groves of recently picked oranges were selected for treatment, and control samples of the soil from each field were taken prior to the application to be analyzed for the presence of DBCP. The purpose of the study was to investigate workers and public safety.[104]

In the water application (irrigation) process, the field had water provided by a pump which delivered water underground by cement pipes to various stand-pipes in the grove into well-constructed permanent earthen furrows between the rows of trees. A control air sample was collected in the field before the application process was begun.

A bung was unscrewed from the top of a sealed 55-gallon drum of DBCP. A Protecto-O-Mfg. closed-system probe was inserted and 30 gallons of pesticide were then pumped through hoses by a gasoline-powered vacuum pump and into a stainless steel application tank. To this DBCP an equal volume of water was added by pumping. This tank was then pressurized by the addition of nitrogen gas under pressure above the surface of the pesticide mixture.

The water pump for irrigation was started and the flow to each furrow was regulated so that reentry into the field was not necessary after application started. A control sample of the water was collected for analysis for DBCP prior to the start of the application.

A hose was attached to the application tank and this was introduced down into the main supply of the flowing water. The flow rate of the pesticide was adjusted to apply about 5 gallons of formulated product per acre evenly over the entire ten-acre plot within a 12-hour period. The flow rate was adjusted to keep the amount of DBCP in the water to less than 100 ppm at any time.[105] It is contended that the rate of application actually exceeded the intended rate but I find that it did not.[106]

In the shank injection process, the soil in the grove had been frenshly disced between the trees. The equipment used had been designed by a licensed applicator, Western Farm Service of Fresno, California. It consisted of a powered-life tow-bar of metal chisels that contained the plastic tubes for insertion of DBCP into the soil while being pumped under pressure. There were shut-off devices near the end of each insertion tube that did not open until at least eight pounds of pressure were forcing the pesticide against then. The chisels were set to insert DBCP six inches below the surface and a steel cultipacker was pulled behind the chisels to pack soil.

The pesticide was pumped from a stainless steel tank mounted on the tractor into the shanks. There was a replaceable carbon filter on the air vent on the vehicle tank to prevent DBCP vapors from escaping. The closed-system equipment and procedures used to load this application vehicle tank were similar to those used for the irrigation application.[107]

The site selected by the grower for shank injection was drier than desirable, thus allowing more DBCP to volatilize into the air and decreasing the amount available in the soil for fumigation. The ground was also very rocky which interfered with the shank-injection and caused one of the shanks to break. The field and soil conditions were therefore marginal rather than ideal for shank injection. They did, however, come within the label condition.[108]

Footnotes continued from last page

was still in its preliminary stage with measurements done on only a small number of animals. EPA Ex. 24 at 18. The SRI studies contained deficiencies which made Dr. Flowers' use of the studies questionable. See Tr. 4941, 4944-45, 4949-51. Likewise, the Ruddick and Newsome and Torkelson studies do not appear to support the conclusions Dr. Flowers would draw from them. See, *e.g.*, Tr. 4959-60, 4974-75. The Weinstein study which Dr. Flowers relied on is discussed above at 50-51.

[99] See EPA Ex. 24 (Exs. 1 and 2).

[100] See 43 Fed. Reg. 11514 (March 17, 1978).

[101] See *e.g.*, Amvac Ex. 12; PGAH Ex. 5 at 8-12.

[102] See Amvac Ex. 11.

[103] EPA Ex. 10; Tr. 424-859.

[104] The report of the study, ACF-59-534, is in the record as Amvac Ex. 3.

[105] EPA Ex. 10 at 3. Part of the irrigation application was made when the air temperature was higher than desirable. This had the effect of increasing the volatilization and reducing the amount of DBCP that went into the soil.

[106] Dr. Maddy explained that the product was underformulated requiring that actually more than 5 gallons per acre be applied. Tr. 517. The DBCP drums were sampled to determine the actual content of DBCP. Amvac Ex. 3.

[107] EPA Ex. 10 at 4-5.

[108] Tr. 526, 531-32, 685. It is not unusual to use shank injection in rocky soil. Tr. 521, 3321-22. Dr. Maddy explained, however, that as a result of the study, if DBCP use were regulated in the future by requiring a permit for each site to which it was

Footnotes continued on next page

Results from the testing showed that 30.6 ppm of DBCP remained in the soil at the shank-injection site 4 days after application.[109] Air samples for the loader showed exposure ranging from 2 to 89 ppb outside his respirator. For the tractor driver, levels ranging between 13 and 35 ppb were recorded outside his respirator. For a 15-minute period during repair of a broken shank, both the loader and tractor driver had levels of DBCP outside their respirator of up to 2 ppm (2,000 ppb).[110]

In the irrigation application, air samples outside the respirator of the applicator ranged from 4 to 17 ppb. Within the field treated by irrigation, air levels of DBCP were in the 21 to 74 ppb range in the early 12-hour application process and built up to a high of 227 ppb in one area of the field at the end of the application process. A sampler 183 meters (about 600 ft.) downwind from the test plot recorded up to 33 ppb.[111]

The second study, entitled "Study of Residues of 1,2-Dibromo-3-Chloropropane (DBCP) in California in Plots of Oranges, Lemons, Grapes, Peaches and Tomatoes Following Treatment of Soil in June 1978" (ACF-59-550) was conducted as a follow-up to the first study. In order to assess possible exposures to field workers, samples of air, airborne dust, surface soil, leaves, and surface bark were taken in addition to samples of each of the treated crops.

In this study, in addition to studying residues on the two plots of the previous study, the following plots were also studied:

(a) A ten-acre plot of Valencia oranges which had last been treated with DBCP at 40 pounds active ingredient per acre in October 1976 was selected as a control plot;

(b) After application by shank injection to both sides of a row of mature lemon trees in Ventura County for a total of 2,304 square feet treated at the rate of 46.3 pounds active ingredient per acre on June 14, 1978 (a commonly applied rate for this crop). The adjacent row which had not been treated was one control. A grove over one mile away which had not been treated with DBCP for two years was the other control;

(c) After application to one row of mature grape vines in Madera County on June 26 by shank injection on both sides. The treatment of 1,620 square feet was at the rate of 51.3 pounds of active ingredient per acre (a commonly used rate). The adjacent row and a row 20 rows away were selected for control plots since this vineyard had not been treated with DBCP for at least three years;

(d) After application to one row of mature peach trees in Madera County on June 26 by shank injection with a total of 1,920 square feet treated at the rate of 51.3 pounds of active ingredient per acre (a commonly used rate). An adjacent row and a peach grove one mile away were selected for control plots; and

(e) After application to one row of prepared ground that was being planted to tomatoes at the same time the seeds were being put into the soil. This was done by tractor shank injection on June 26 in Fresno County. A total of 500 square feet of soil was treated on both sides of the row at a rate of 71.1 pounds of active ingredient per acre (a commonly used rate). An adjacent row and a row 20 rows away were selected for control plots since this plot had never been treated with DBCP.

All applications at all sites were made by Western Farm Service, a Licensed Pest Control Operator, under an Experimental Use Permit issued by the California Department of Food and Agriculture (CDFA). All work was done by supervisory staff of the firm.[112]

Fruit treated with DBCP in this study disclosed that detectable residues, were found in oranges, lemons, peaches and grapes. The analysis was made on the basis of residues found in the whole fruit, washed fruit, peeled fruit, peelings and leaves (dislodgeable and penetrated). A residue of 120 ppb was found in grapes 31 days after treatment. Other residues often well over 1 ppb, were found to be present in one or more of the portions of the four fruits for up to 100 days after treatment and in some cases longer. In a row of lemons adjacent to the row treated with DBCP residues, 5.6 ppb of DBCP were found in the whole fruit and 6.4 ppb in the peels. In a row of lemons over one mile away from the treated lemons, and last treated with DBCP in 1976, 3.2 ppb of DBCP was found in the peeling on fruit tested in September 1978.[113]

The third study, ACF-59-550 (Supplement of August 1, 1979), presented the results of a continuation of the second study, and included samples taken as long as 343 days after application of DBCP.[114] In this study, a residue of 8 ppb was found on the whole fruit of Valencia oranges at the time of harvest 343 days after treatment. A residue of 2.0 ppb was also found on the whole fruit of lemons at the time of harvest, 343 days after treatment.[115]

The fourth study, entitled "A Study of the Presence of DBCP in the Breathing Zone of Applicators During Controlled Field Applications of DBCP in California in 1979" (HS 626), monitored applications of DBCP by a shank injection process in a fallow field, by irrigation in two grapefruit groves and by irrigation and shank injection in a grape vineyard in March 1979 near Indio, California. The study measured the levels of DBCP found in the air in working areas during application, both inside and outside of three types of respirators. A scientist from the National Institute of Occupational Safety and Health (NIOSH) Headquarters, Dr. Gene Kennedy of Cincinnati, and an industrial hygienist from the California Department of Health Services, Mr. Robert Reeves, were present as consultants.

DBCP was applied at a rate of 51.3 pounds active ingredient per acre in each application. Undiluted DBCP was applied by the chisel shank method at a rate of 2½ to 3 acres per hour at an injection depth of six to eight inches below the soil surface. In the water-run application, DBCP was introduced into irrigation water at a rate consistent with a uniform distribution of 43 pounds active ingredient per acre.

Shank injection procedures were accomplished by one worker. During mixing, loading, and equipment calibration, three individuals, each wearing one of the test respirators, were present in the immediate vicinity of the loading site to facilitate simultaneous measurements with each of the respirators.

With respect to the irrigation procedures, since the application of DBCP via irrigation water requires only a single, rather than a repetitive sequence of activity, the three respirator types were tested simultaneously. Actual application operations were conducted by a single individual and help was allowed only if such assistance was required during normal field operations. Three separate individuals, one worker and two surrogates, were present in the immediate area of irrigation application activities. The

Footnotes continued from last page applied, a use permit would not be issued for that type of field. Tr. 685. A more desirable field for running the test was rejected because of houses nearby. Tr. 810.

[109] EPA Ex. 10 (Ex. 3), Table 2.

[110] EPA Ex. 10 (3) Table 6. It is not unusual for a shank to break during application, although it is probably more likely to happen in rocky soil. See Tr. 329¾.

[111] EPA Ex. 10 (Ex. 3), Table 5; Tr. 721.

[112] EPA Ex. 10 at 7-8; Amvac Ex. 4.

[113] EPA Ex. 10 (Ex. 5).

[114] EPA Ex. 10 at 9; Amvac Ex. 5.

[115] EPA Ex. 10 (Ex. 7), Tables 2 and 4. The report, Amvac Ex. 5 at 2, appeared to attribute the residues on oranges and lemons to treatment on dry soil with shank injection process in warm weather without follow-up irrigation.

specific respirator type worn by each individual was assigned by random drawing just prior to commencing operations. The two surrogate workers simulated the activities of the applicator in order to approximate the same amount of physical exertion.[116]

Samples of the air inside and outside the respirators were taken and analyzed. It appeared from the study that the respirators were effective in keeping the concentration of DBCP at very low levels, given the levels of outside concentration measured to which the person was exposed.[117]

The fifth and final study on ambient air and food residue exposure was "Study of Residues of 1,2-Dibromo-3-Chloropropane (DBCP) in California in Plots of Grapes, Grapefruit, Oranges, Tomatoes, Peaches, Lemons, and Almonds Following Treatment of Soil in the December through the Early May Period of 1978–1979" (HS–624 (August 1, 1979)), and was a comprehensive study whose broad objective was to evaluate the overall potential exposure to DBCP during or as the result of agricultural use. Specifically, it was designed to study: The ambient air concentrations of DBCP during the loading operation and application process; the potential of full-face cannister and cartridge respirators and powered air-purifier respirators to protect workers from the ambient air concentrations during DBCP field applications; the use of built-in probes, closed system equipment, and especially designed shut-off devices on the application rig to reduce the exposure to the loader and the tractor driver during the transfer operations and the application of DBCP; and the amount of DBCP in the air, soil, water, bark, foliage, and fruit during and after the application of DBCP.

The crops treated were oranges, grapefruit, lemons, peaches, almonds, grapes and processing tomatoes. Plots of approximately one acre each in size of each commodity were treated in a variety of soil types of several areas of the state. Most plots were tested prior to treatment and thus served as their own control. Other control plots were far enough removed from any possible contamination including possible exposure via air, and yet close enough to duplicate the experimental conditions of the treated plots. A total of 35 plots were treated with DBCP.

Two methods of application were used. A majority of the plots were treated by shank injection; the other half was treated by the water-run (irrigation) method. Closed systems were used to perform all transfers of DBCP from the original container to the application rig. Closed systems involved units utilizing either vacuum or positive-displacement pressure systems. Quick-disconnect dry-couplers were used at all connections to avoid incidental spillage.[118]

Samples of soil, bark, water, commodities, foliage, and air were collected and analyzed. Residues were found in some samples of every crop treated.[119]

The EPA on studying the residue information obtained from the CFDA studies concluded that it called into question the assumption originally made that no residues were likely to be found on the crops which were conditionally cancelled. These crops included the grapes, lemons, grapefruit, almonds and peaches specifically tested by the CFDA. The California residue studies instead disclosed that residues could be found in the edible portions (including the peelings of fruit) of crops treated with DBCP, and that the residue could result from absorption and translocation within the plant. Except for strawberry nursery stock, it was estimated that these residues could occur in levels of up to 10 ppb.[120]

It is contended that the California studies do not support the assumption that the residues found in the crops studied there resulted from absorption of DBCP through the roots and translocation to the pulp or peel. Dr. Maddy believed, for example, that the residues on some of the fruit might result from volatilization and from dust containing DBCP being stirred up and deposited on the product. One method being considered to control these residues would be to more effectively seal the soil during application and to prohibit cultivation during a preharvest interval.[121] But this is only a tentative conclusion.[122] Even assuming that the method of application, soil conditions and cultivation does affect the level of residue in the crop, there is not sufficient evidence in this record to determine what measures should be required to reliably prevent DBCP residues.[123]

Amvac also contends that the residues found, even despite allegedly improper applications practices, were below the action level used by the United States Food and Drug Administration (FDA). The FDA action level is 50 ppb and is not a tolerance but a temporary level based on the limit of detection of their analytical procedures.[124] Proceduress for analyzing DBCP were refined in the California studies to permit the detection of 1 pbb of DBCP. There is no showing that levels of exposure below 50 ppb are safe and this cannot be inferred from the FDA action level. Contrary to what Amvac contends, there is no evidence that the FDA has officially changed its action level of 50 ppb to 1 ppb.[125]

The applications in the first (Ventura) study were done with special equipment selected by an experienced applicator. For the subsequent studies, the applications were also done by experienced applicators with equipment selected by both a representative of the University of California and a representative of one of the chemical companies, and was considered the best available equipment for that geographic locale.[126] It is true that there may be a difference of opinion about some of the procedures, and that accidents did occur.[127] The record, on the whole, however, shows that the studies did reliably duplicate current application practices with the best available equipment for that region.

Residue studies were also made with respect to pineapples which are grown in Hawaii.

In early 1977, Fred Hertlein and Associates made an independent monitoring study of one of Maui Pineapple Company's planting machines which applies DBCP. This study showed less than 1 ppb DBCP ambient air concentration (over an eight-hour time weighted average) in the vicinity of each category of workers on the planting machine, including the equipment operator, mulch operators and

[116] EPA Ex. 10 at 10–13. Amvac Ex. 6 is a first draft of the article written by the physician. Tr. 558.

[117] See EPA Ex. 10 (Ex. 8). The highest outside level measured was 131 ppb. In case of an accident such as a broken shank, the level could go up much higher. See Tr. 697–8.

[118] EPA Ex. 10 at 13–14; Amvac Ex. 7.

[119] The results are shown in EPA Ex. 10 (Ex. 10).

[120] EPA Ex. 17 at 9; Tr. 1221–22, 1228–30.

[121] Tr. 731–32, 829.

[122] See Tr. 785–86, 855.

[123] Dr. Maddy, for example, believed that the shank injection application should be followed by covering the field with water, in order to keep the DBCP from volatilizing in the air. Tr. 551. It is possible, however, that this might contribute to water contamination. The covering of the field with plastic mulch at the time of application appears to have kept air level concentrations of DBCP at a minimum in Hawaii. *Infra* at 80. But it is not indicated how practical this method would be for other crops.

[124] Tr. 788–90.

[125] Tr. 1644.

[126] EPA Ex. 10 at 5; Tr. 674.

[127] See testimony of William J. Carrol, Amvac Ex. 16; Tr. 4023–4194, 4410–4416; and of Jack L. Prieur, Amvac Ex. 17, Tr. 4195–4398. There is at present no system of application that is completely closed. Tr. 614, 657, 660. Mr. Prieur claimed that Amvac is developing a new closed system which would be an improvement over present systems but refused to disclose the details on the ground that the information was confidential. Consequently, no weight is given to that evidence. See Tr. 4308–21.

supervisor.[128] These results, however, must be limited to the Maui Pineapple Company workers alone. The levels of Castle & Cooke and Del Monte, which were also tested, were omitted because they were higher than the levels reported at Maui Pineapple Company.[129] The Maui Pineapple machine tested was much newer than the application machinery employed by Castle & Cooke and this appears to be one reason why lower residues resulted from the Maui Pineapple machine. Another reason appears to be that Maui Pineapple Company is the only one of the three companies to cover the fields with a plastic mulch at the same time DBCP is injected into the soil.[130]

A test conducted in July 1979 by Maui Pineapple Company measured ambient air concentrations of DBCP, over an extended time period, in a pineapple field at locations three feet above the field surface at the center and downwind edge of the field. The test recorded a peak DBCP concentration of .35 ppb two weeks after DBCP fumigation. The average DBCP concentration for a 50-day period was below .2 ppb. DBCP levels declined to below .1 ppb by the thirtieth day after fumigation, and to .01 ppb by the forty-seventh day after fumigation.[131] Tests of pineapple grown by Maui Pineapple Company have shown no residues of DBCP in commercial pineapple fruit (canned or fresh) or bran.[132]

An analysis made of pineapples taken in July 1979, from Castle & Cooke fields on Oahu showed no detectable residues. This field had been fumigated with DBCP in 1977, and the results, therefore, are not indicative of whether residues may not exist on fruit which have been recently exposed to DBCP because of treatment nearby.[133] The same is true with respect to the analysis of pineapples taken from Castle & Cooke fields on Lanai.[134]

No DBCP residues were detected (at a sensitivity level of 0.5 ppb) by Maui Pineapple Company in twenty pineapple fruit drawn in February 1979 from the edge of a DBCP-treated field immediately adjacent and downwind of an area fumigated with DBCP 5½ months previously.[135]

DBCP has been detected in a test of Hawaiian pineapple fruit involving twenty fruits taken from pineapple plants in May at the extreme edge of a field which was immediately adjacent and downwind from a field newly treated with DBCP. The samples were covered with dust from the adjacent DBCP-treated field. Levels of DBCP of 0.38 ppb and 0.88 ppb were found in two composites of five fruits, while none was found in the other two composites.[136]

I find therefore that residues in pineapple are unlikely to occur with the application machinery used and under the application methods followed by Maui Pineapple Company, if it also follows its proposal of not fumigating immediately upwind of mature fruit.[137] Not all pineapple producers, however, appear to be following these methods at this time or have equivalent machinery.

2. The Water Contamination Studies

In February of 1979, the Sanitary Engineering Section ("SES") of the California Department of Health Services was investigating possible DBCP contamination at the Occidental Chemical Company facility near Lathrop, California. DBCP had been manufactured at that facility, which is in San Joaquin County. In connection with that investigation, two drinking water wells were sampled at farms adjacent to Occidental and were found to contain DBCP at concentrations of 6 ppb and 13 ppb. One well was 500 feet from the waste disposal pond and the other one-quarter of a mile from the waste disposal pond.[138]

SES then expanded the initial Occidental investigation to include sampling from the water supply at Lathrop and additional sampling at the Occidental site. All of these samples were taken from sites within approximately one-quarter of a mile from the Occidental facility. All showed the presence of DBCP. Three were domestic wells.[139]

The California Regional Water Quality Control Board #5 continued the investigation and sampled water from one well in Butte County and 9 wells in Stanislaus County. These counties were nearby to San Joaquin County. Two samples in Stanislaus County were found to contain residues of DBCP. At that point CDFA, as the state agency that regulates pesticides, was requested to take action.[140]

CDFA then collected 258 groundwater samples during May, 1979, from domestic, irrigation, and municipal wells. Ninety of those wells showed the presence of DBCP in levels ranging from a high of 39.2 ppb to a low of 0.1 ppb. The study included irrigation and domestic wells and municipal wells of various depths in the counties of Yolo, San Joaquin, Stanislaus, Merced, Fresno, Tulare, Ventura and Riverside. The areas selected were essentially rural areas where DBCP was believed to have been used in agriculture prior to 1977.[141]

The SES then made a further investigation of the areas where DBCP was used in agriculture in California. As of July 21, 1979, the SES sampling program reported results on 527 samples. A summary of those results are as follows:

193 of the 527 samples (36.6%) showed some amount of DBCP/

63 of the 527 samples (12.0%) showed more than 1 ppb of DBCP.

121 of the 527 samples (23.0%) showed more than 0.1 ppb DBCP.

142 of the 527 samples (26.9%) showed more than 0.05 ppb DBCP.[142]

In twenty out of more than 100 community drinking water systems sampled, at least one groundwater source showed DBCP at concentrations of 1 ppb or higher.[143]

Neither Dr. Maddy nor Mr. Gaston from SES could identify the precise cause of the contamination. It appears that California will not consider reregistering DBCP until it is satisfied that it can deal with the water problem.[144]

The EPA has also done sampling of water in Hawaii, Arizona, and the Southeast. Ten wells in Arizona were found to have DBCP and one well in Hawaii. No DBCP has yet been found in the Southwest.[145]

There are three possible explanations for the DBCP contamination of well water. The first is that the DBCP contamination in water filtered downward ("leached") from the application site into the aquifer which supplied the wells.[146]

[128] PGAH, Ex. 5 (Ex. 1) at 4, 10.

[129] Tr. 4698–99.

[130] PGAH Ex. 5 at 8; Tr. 4696–97, 4700–4701, 4708.

[131] PGAH Ex. 5 at 12, 13 and Exhibit 16 thereto.

[132] PGAH Ex. 5 at 14–18; Tr. 4751.

[133] See PGAH Ex. 3 at 9.

[134] See PGAH Ex. 3 at 10 and Exhibit 6 thereto.

[135] PGAH Ex. 5 at 15.

[136] PGAH Ex. 5 at 15–16.

[137] PGAH Ex. 5 at 14–18.

[138] EPA Ex. 11 at 2–3.

[139] Tr. 893–95.

[140] EPA Ex. 10 at 15; EPA Ex. 11 at 3; Tr. 890.

[141] EPA Ex. 10 (Ex. 12); Tr. 902.

[142] EPA Ex. 11 at 7.

[143] EPA Ex. 11 at 9.

[144] EPA Ex. 10 at 17, EPA Ex. 11 at 10. Dr. Maddy testified that the inability to solve the water problem has precluded California from going ahead with reregistration hearings. Tr. 751, 854–55.

[145] EPA Ex. 14 at 8 and Ex. 5 and 7 to that Exhibit.

[146] This is principally discussed in the testimony of Mr. Cohen, EPA Ex. 11, Tr. 1053–1132; of Mr. Callahan, Gowan Ex. 3, Tr. 2223–2341; of Dr. Guymon, Amvac Ex. 14, Tr. 3511–3717; and of Mr. Mink, PGAH Ex. 4, Tr. 4538–5658. Although not expressly so defined, an "aquifer" appears to be a water-bearing bed of permeable earth into which wells can be sunk. See Tr. 917. Water from the surface moves downward through the soil to aquifers. Aquifers can either be at the level of the water table or at some higher level if there is an obstruction to the downward flow of water. Water from a high level aquifer can also discharge into a spring. See PGAH Ex. 4, at 3, Tr. 4556–63.

The second is that the contamination resulted from DBCP irrigation application whereby the water containing DBCP seeped into an adjacent well or was syphoned back (backflushing) into the irrigation well.[147]

The third possible explanation is that DBCP which is present in an abandoned well or in a well directly contaminated also contaminates the aquifer into which that well is tapped.[148] This, however, would not preclude the possibility that the original contamination was caused by leaching.

The evidence indicates that while seepage or backflushing may account for some part of the contamination, leaching cannot be dismissed as a principal cause of the contamination found.[149] This is shown by the following:

Factors which control the transport of DBCP in the soil are soil moisture, soil texture and composition, and temperature. Studies on the application of DBCP have shown that DBCP leaches through soils with a low proportion of clay and organic matter, and a high proportion of sand. Soil moisture will decrease the quantity of DBCP which volatilizes in the air compared to the amount that still stays in solution. On the other hand, dry soil and high temperatures are likely to increase the amount of DBCP that is volatilized in the air.[150]

Studies on the application of DBCP have also indicated that DBCP can persist in the soil for a long period of time, even under optimal conditions for degradation.[151]

Positive results obtained from the studies done of DBCP contamination of well water point to the probability that contamination was caused by leaching. Contamination was found in many municipal wells in California. It is standard practice for such wells to be sealed to prevent bacterial contamination of the drinking water. Thus, it is unlikely that contamination in these wells could have resulted from surface water seeping into the well.[152]

The discovery of DBCP in the groundwater in Hawaii, discussed below, is proof that DBCP can leach into groundwater. The contamination cannot be ascribed to water-run methods since the method of application was by shank-injection and water-run methods are not used. The soil appears to be silty clay loam and not sandy soil as appears to have been the case in California.[153]

On the question of the likelihood of contamination of drinking water in Hawaii, Mr. Mink provided considerable evidence about the geology of the Hawaiian Islands and the sources of its drinking waters.[154] Municipal drinking water is obtained principally from basal aquifers which usually lie at great depths. Thirteen groundwater samples were taken by Maui Pineapple Company and sixteen samples were taken by EPA. Almost all tapped into a basal aquifer.[155] DBCP was found in only one of these—the old Maui High School well. That well, however, was claimed to be poorly constructed, being cased only down to 40 feet. Consequently, it was surmised that the concentration could have occurred by contaminated water from a high level aquifer trickling down into the well.[156]

There are, however, significant gaps in Mr. Mink's testimony. Little information is given about high level aquifers into which DBCP admittedly may leach, and, in fact, has leached. These aquifers may also be used both as private and as municipal sources of drinking water.[157] Of the 13 groundwater samples taken on Maui, two of these were extremely unlikely to contain DBCP because they were up gradient from pineapple fields or too distant. Five of the 11 tested showed the presence of DBCP.[158] Mr. Mink admitted that he had no knowledge about private wells which tapped into high level aquifers on Maui.[159] Furthermore, Mr. Mink's testimony is inconclusive on how unlikely it is that other wells tapping into basal aquifers may also have casings which do not extend below 40 feet and which would allow seepage from contaminated high level aquifers.[160]

I find, therefore, that on balance the evidence does not demonstrate that it is unlikely that there will be no DBCP contamination of drinking water in Hawaii within the next year or so.

I also find that the evidence does not demonstrate that it is unlikely that there will be no DBCP contamination of drinking water in the Southeast. It appears that improper storage of samples and the lack of information about DBCP usage in the areas from which the samples were taken made the negative results obtained so far from the Southeast inconclusive, and not that the terrain or method of application has precluded contamination.[161]

Mr. Callahan purported to rely on a study conducted by the United States Geological Survey to show that DBCP is not likely to be found in water in the Southeast. But Mr. Callahan knew very little about the survey, and in fact didn't even know if the Geological Survey was looking for DBCP in groudwater and whether the study was complete.[162] Mr. Callahan testified that "more complete studies are needed in the Southeast to determine the environmental fate of DBCP."[163] This is in accord with Mr. Cohen's own conclusion about the sampling in the Southeast.[164] The conclusion to be drawn from this is that until there are further studies it cannot be assumed that DBCP is unlikely to be found in drinking water in the Southeast on the basis of the evidence in this record. There is no question that DBCP has been used in the Southeastern United States, and in the states of Georgia, Florida, and South Carolina, to which Mr. Callahan specifically addressed his testimony.[165] Since the evidence, on balance, does indicate that DBCP can leach into the groundwater given the proper soil conditions, the likelihood that DBCP may contaminate groundwater, even in the Southeast, simply cannot be ignored until there has been evidence firmly showing that this cannot occur.

Finally, the study done of wells in Texas was too sketchy to be

[147] This is discussed principally in the testimony of Mr. Lavagnino, Amvac Ex. 14; 3221–3303, and Dr. Guymon.

[148] See Tr. 920.

[149] No witness disputed the fact that DBCP can leach through the soil given proper conditions.

[150] EPA Ex. 14 at 2–3. These studies were controlled studies concerned with application methods and DBCP's effectiveness as a fumigant, and not with the problem of DBCP contaminating drinking water. See EPA Ex. 14 (Ex. 1 & 3). They do, however, provide information about DBCP's persistence and movement in the soil. The evidence is inconclusive on what actual soil conditions would preclude leaching except to indicate that DBCP will not readily penetrate in topsoils which have a heavy clay content. See Tr. 5274. DBCP is not recommended for use on the Amvac label for citrus if the soil is above 20% clay. Amvac Ex. 16 (Ex. 1).

[151] EPA Ex. 14 at 5–7, and Exhibits 1 and 2 thereto. Dr. Guymon apparently misread the Castro & Belser Study (Exhibit 2). See Tr. 3618–19.

[152] Tr. 914–916. The assumption that the contamination could have been caused in every case by a municipal well drawing from the same aquifer as an irrigation well contaminated by DBCP backflow seems too speculative. See Tr. 920–21.

[153] PGAH Ex. 5 (Ex. 2), PGAH Ex. 4 at 5.

[154] PGAH Ex. 4; Tr. 4536–4658.

[155] Tr. 4654–55, 4805–06; EPA Ex. 14 (Ex. 5).

[156] Tr. 4575–76; 4607–08.

[157] Tr. 4563, 4580, 4612–13, 4618, 4655–56.

[158] Tr. 4654–55, 4806.

[159] Tr. 4655–56.

[160] Tr. 4609.

[161] EPA Ex. 14 at 12–15.

[162] See Tr. 2323–38.

[163] Gowan Ex. 3 at 4–5.

[164] EPA Ex. 14 at 15.

[165] See *e.g.*, the testimony relating to DBCP usage on peaches, citrus, vegetables and soybeans, *infra* at 93–98, 101–105, and EPA Ex. 38.

persuasive.[166] Indeed, it is unclear whether it has been concluded.[167]

3. Conclusion on Risk

The evidence shows that DBCP is hazardous and that humans are likely to be exposed to it. The risks demonstrated are sufficient to suspend the use of DBCP unless there are countervailing costs and benefits which outweigh these risks, a question which will be considered below.

The exposure of most serious concern is the possibility of contamination in drinking water, because the indication is that it may be an inevitable consequence of using DBCP except where there is firm evidence, which is absent from this record, that geological conditions will foreclose contamination. Perhaps further studies or more complete knowledge about DBCP's transportation and persistence in the soil will provide the necessary information. These are, of course, matters which can more fully be inquired into in the cancellation case.

The fact that residues can occur in the food crops treated with DBCP is also of major concern. It is indicated that the residues result from the volatization of DBCP during application or from DBCP-contaminated dust settling on the outside of the fruit and the leaves, rather than from DBCP entering the roots and translocating into the fruit. If this is so, then there may be a means for controlling this exposure by the use of fully closed systems for loading (which at the present time are not available), by closed system application, by appropriate application methods, by limiting the time of DBCP treatment, and by taking other measures to keep dust from DBCP-treated areas off the fruit. The record, however, does not permit an adequate determination of whether residues in food can effectively be so controlled, with the possible exception of pineapples.[168] Again, these are also matters that can be considered in more detail at the cancellation hearing.

There is also evidence indicating that the current restrictuions on the label may be inadequate to protect against exposure. Thusm there is evidence that respirators and protective clothing may be impractical except under certain weather conditions. There is also evidence that the present label restrictions may not adequately protect from exposure either farmworkers who must handle DBCP or work in the fields in which it is applied, or members of the public who live near application sites. I have not addressed the question of the adequacy of the current label restrictions or whether more stringent restrictions short of suspension can or should be applied, because of my conclusion that the risk of exposure by ingestion in drinking water or food cannot, on the basis of this record, be controlled with sufficient certainty to prevent exposure.

III. The Benefits of DBCP

Even though there are risks associated with DBCP, it may not be suspended if the environmental, social, and economic costs of suspending DBCP for the one year to complete the cancellation proceedings would outweigh the risks. It is, therfore, necessary to examine these costs.[169]

DBCP is a fumigant nematode. It controls nematodes which live in the soil and attacks the roots of plants. There are numerous kinds of nematodes and whether nematodes are a problem and which kind of nematode is the cause will depend on the soil and other local conditions.[170]

There are other nematicides which are currently registered and available for controlling nematodes on some or all of the crops on which DBCP is also used. Some of those which have been identified are: Vorlex, Vapam, Mocap, Etheylene Dibromide (EDB), Ethoprop, D-D, Telone, Aldicarb, Oxamyl, Dasanit, and Nemacur.[171]

It should be noted that the alternatives considered are those which are currently registered for one or more of the same uses as DBCP. I have not taken into account, in determining the consequences of suspending DBCP, the fact that some of these alternatives, *e.g.*, EDB, may be under RPAR review because of their indicated toxicity. RPAR reviews can take time to conclude. Further, it cannot be assumed that even if the RPAR review were concluded while these cancellation proceedings are still pending, the pesticide will be suspended or more rigorous restrictions will be proposed than for DBCP. In short, the possibility that an alternative may also become unavailable during the cancellation hearings seems too speculative to be considered in evaluating the costs of suspending DBCP over the relatively short period of a cancellation proceeding. I also, for similar reasons, did not consider the possibility that some pesticides not currently registered for the same uses as DBCP may become so registered during the cancellation proceedings. The future availability or non-availability of substitutes for DBCP, however, may be an appropriate consideration in the cancellation proceedings, which is concerned with the long-term effects of taking DBCP off the market permanently.[172]

The major uses for DBCP are on peaches, citrus, almonds, plums, apricots, cherries, walnuts, figs, vineyards, pineapples, soybeans, cotton, sorghum, commercial vegetables and strawberry nursery stock. The effect of suspending DBCP on these crops will now be considered.

A. Peaches

Peaches are grown commercially in 32 states in the United States with California by far the dominant producer. The 1978 crop totalled about 2.7 billion pounds of peaches valued at $309 million. California accounted for about 60% of the crop and 44% of the total value of production. Other major peach states include South Carolina (12% of the 1978 crop) and Georgia (4% of the 1978 crop).[173]

DBCP is applied to peach land and established orchards for preplant (prior to the time the trees are set) and postplant (established orchards) nematicide control. Application is usually by soil injection method. Suitable alternative nematicides, EDB, Telone and D-D, are available for

[166] See Tr. 2885, 2888, 2931–34, 3067, 3076. Rogers' contention that he had no knowledge of present usage of DBCP in Texas prevented probing of the approximate number of regions in Texas where DBCP is used. Some indication that Rogers failed utterly to obtain a cross-section can be gleaned from the testimony of Dr. Thames, a nematologist from Texas whose testimony was presented by USDA. Dr. Thames testified that cotton alone is grown in a number of regions of Texas, and DBCP has been used to treat cotton in those regions. Tr. 5097.

[167] Tr. 2880, 2893, 3085, 3088.

[168] It does appear that application machinery and methods now being used by Maui Pineapple Company in Hawaii, including the proposal to not fumigate immediately upwind of mature fruit, will result in no detectable residues. *Supra* at 80–81. But the presence of DBCP in water still requires suspension.

[169] The one-year period for completing cancellation proceedings is based on the Administrator's estimate. See 44 FR 4338. Whether or not this estimate is realistic only time can tell. Many, if not all of the issues probably have been considered to some extent in this suspension proceeding, and this should aid in speeding the progress of the cancellation case. In any event, I am unable at this time to say that one year for trying the cancellation case is unreasonable.

[170] Tr. 6630–31.

[171] D-D and Telone both contain basically 1,3-dichloropropane. Tr. 5279, 6013. "Temik" is a registered name for Aldicarb. Tr. 5119. "Nemacur" is another name for Phenamiphos. Tr. 5199.

[172] There is also evidence indicating that some of the alternatives such as EDB and 1-3-dichloropropane (D-D and Telone) are more acutely toxic than DBCP. USDA Ex. 5 at 7. Acute toxicity like causing burns on dermal contact presumbly can be guarded against by such measures as wearing protective clothing and gloves. See Tr. 6994. Moreover, the judgments about the relative dangers of DBCP and its alternatives appear to have been made without considering the chronic hazards of being exposed to DBCP. Tr. 6065–68, 6156–58.

[173] EPA Ex. 35 at 7.

preplant treatment but because they are phytotoxic (toxic to the plants), they cannot be used postplant, and there are no currently available alternatives registered for postplant use on fruit-bearing trees.[174] There is evidence that Nemaguard Rootstock is resistant to root nematodes and has done away with the need for using DBCP to control that pest under many conditions.[175]

DBCP is currently under a state-imposed suspension in California and has been suspended since August 1977. Consequently, a suspension of DBCP would only affect growers in states other than California. The evidence in this case on peach production outside of California related to the Eastern United States, principally the Southeastern states of South Carolina, Georgia, and North Carolina.[176]

DBCP has been used in the Southeast to combat a syndrome known as peach tree short life, which can shorten the commercial life of a peach orchard from 12–13 years to 6–7 years. Nematicide control along with quality nursery stock, proper rootstock, soil pH, nutrition, weed control methods, and time of pruning must all be considered in combating peach tree short life, since each factor is thought to affect the susceptibility of peach trees to injury by cold or bacterial canker.[177] Nematode control contemplates both a preplant treatement, where nematodes are found to be present, and a postplant treatment every two years. There are satisfactory alternatives to DBCP for preplant treatment, as already noted (*supra*, at 93), but they appear to be more expensive to use than DBCP.[178] There are no currently registered alternatives to DBCP for postplant treatment for trees bearing fruit.

The EPA economist, Mr. Mark Luttner, has estimated that a year's suspension of DBCP will result in the following increased costs to peach producers:

Assuming that 6,325 acres of the acreage planted each year with new trees is treated preplant with DBCP, and that DBCP costs $25 a gallon, the cost of using an alternative pesticide would be an additional $49 an acre to the grower.[179] Since the establishment cost for a peach orchard is estimated at approximately $1,300, the grower would be incurring an additional 4% cost. The estimated total cost for using an alternative to DBCP on 63,255 acres for preplant treatment would be $.31 million.[180]

A South Carolina study on the use of DBCP for preplant and postplant fumigation in treating peach trees disclosed that by the time the trees were five years old, yields from trees which had received pre-plant and postplant treatments with DBCP were 7% higher than yields from trees which received only preplant treatment. Assuming this 7% yield differential, and that 12,000 acres in the East are treated each year, postplant, the 7% reduction was calculated to reduce the growers' net return per acre from $787 to $736, a reduction of $51 per acre or 6.5% of net revenue.[181]

An additional 4% in preplant costs and a 6.5% reduction in net revenue could create hardships in some cases, assuming that a grower did sustain these losses on his entire peach production.[182] They do not appear, however, of sufficient magnitude to indicate that growers could not continue in production during the suspension period. For example, little DBCP has been applied in South Carolina since 1977.[183] Yet it was the experience of a South Carolina grower who testified that his 1979 production was larger than his 1977 production.[184]

A study of the effect of the DBCP suspension in California would possibly have been helpful in evaluating how significant DBCP was to the production of peaches. The information about California, however, is silent on any adverse effects on peach growers.

DBCP was used as a preplant nematicide on about 2,000 acres per year in California, and as a postplant nematicide on about 21,900 acres per year prior to its suspension in 1977. The postplant treatments were applied every three years.[185] Consequently, the effects of not applying DBCP postplant in 1977 and 1978 on acres due for treatment in these years should have been noticed in the 1979 crop. Production of California freestone peaches declined 14.5%, and clingstone peaches declined 18.4% from 1977 to 1978. According to the 1979 production projections for California peaches, however, freestone production is up 20% from 1978, and clingstone is up 5.6% from 1978. Factors such as weather, water availability and cost, and pest infestations, as well as the DBCP suspension, undoubtedly contributed to the 1970 decline. The extent to which the unavailability of DBCP was responsible for the decline cannot be determined with any degree of accuracy in view of the increase in the 1979 production and the fact that a similar drop in California peach production between 1974 and 1975, when DBCP was available, also occurred.[186] Producers in California presumably have been affected by the increased preplant costs in using alternative pesticides. Since, however, there has not been any decrease in production, it cannot be assumed that growers have had to discontinue production, or even have been unable to realize a profit.[187] Peach prices appear to have risen steadily between 1975 and 1978.[188] In a market of rising prices, the grower is less likely to feel an increased cost than if the price had remained the same or decreased. The lack of evidence of any real harmful consequences to California peach growers is further evidence that growers would not be seriously effected by a suspension of DBCP.

Assuming that the suspension does result in a decrease in yield, the consumer may be affected by an increase in price. Mr. Luttner estimates that the per capita decrease in yield from the eastern crop could result in an increase of $0.011 per year, assuming

[174] EPA Ex. 35 at 13. Phenamiphos is registered for postplant use on non-bearing peach trees in Indiana, Maryland, Utah, New Jersey, West Virginia, Delaware, Pennsylvania, Michigan, Maine, New York, and Virginia. Oxamyl is registered for postplant use on non-bearing peach trees. Carbofuran is registered for use on non-bearing peach trees in West Virginia and New Jersey. The utility of non-bearing postplant nematicides is limited in peaches since trees generally start to bear in the third year after planting and preplant nematicides usually provide adequate control up to that point. Use of non-bearing postplant nematicides is important to the production of nematode-free nursery stock. *Id.*

[175] Tr. 5507.

[176] North Carolina accounted for about 2% of the 1976 crop.

[177] EPA Ex. 35 (Ex. 3) at 693.

[178] The gallon prices for DBCP, however, have risen considerably in the past few years so that there is some question about how much cheaper DBCP is than the alternative. This appears to have been due in part to the withdrawal from the market after 1977 of large manufacturers such as Dow and Shell as a result of the regulation of DBCP manufacturing by OSHA and the EPA suspension. See Tr. 5100, 6807. Amvac is still a producer but there is evidence that it will only sell DBCP in carload lots, if it sells DBCP at all in the area. Tr. 6885, 7017–19. If this is the basis on which DBCP is offered to growers, and the record is inconclusive on this, the purchase of DBCP may be beyond the financial capability of a grower or may involve storage costs, if a larger quantity has to be purchased than is required to meet current needs.

[179] EPA Ex. 35 at 6, 15–16.

[180] EPA Ex. 35 at 6, 15–16.

[181] EPA Ex. 35 at 17–19.

[182] Ring nematodes which attack peach tree roots can be at different levels even within a field. Tr. 6435. Consequently, not all peach trees in a field could be equally affected.

[183] Tr. 6546. The reason for not applying DBCP appears to have been that the weather has been too dry.

[184] Tr. 6580. It also appears that his 1979 production was larger than 1978 but his net income was lower than 1978 because the price was down. Tr. 6617–18.

[185] EPA Ex. 35 at 6.

[186] EPA Ex. 35 at 20–21.

[187] Dr. Hart, an extension nematologist from the University of California, did not know of any decline in yield per acre or revenue per acre since the suspension of DBCP. Tr. 5512.

[188] EPA Exhibit 35 at 21.

that the grower sought to recoup his loss in yield by raising his price.[189] The actual price increase, however, would presumably fall only on those who purchase peaches and it is subject to variations in supply due to weather or other conditions.[190] It is nevertheless true, however, that to the extent there is a cost arising from a decrease in the supply of peaches because of the unavailability of the DBCP, the cost will be apportioned, subject to the economics of the market between the grower and consumer.

It must be emphasized that what is involved is the consequences of suspending DBCP for one or possible even two years. It may well be that the permanent cancellation of DBCP would result in substantial financial losses to peach growers. But suspension proceedings are concerned with imminent consequences, not long-term effects. The imminent consequence here, to human beings, is the possibility of cancer or of sterility, or of abnormalities in children because a parent has been exposed to DBCP. These effects could be irreversible. There has been no showing that there will be irreversible effects in the peach industry, following a year's suspension or even if the suspension should last two years.

B. Pineapples

Pineapple is grown in Hawaii on a cycle of three to five years, with an average cycle of four years. Pineapple plants flower from twelve to fourteen months after planting, and the first pineapple fruit (known as the plant crop) is harvested from eighteen to twenty-two months after planting. The second fruit (known as the first ratoon) is harvested from thirty-two to thirty-six months after planting. The third fruit (known as the second ratoon) is harvested (if at all) from forty-eight to fifty months after planting. Ninety-eight percent of pineapple field tonnage and one hundred percent of canned pineapple in Hawaii are produced by the three member companies of PGAH: Castle & Cooke Foods, Del Monte Corporation, and Maui Pineapple Company.[191]

DBCP is used in Hawaii to kill reniform and root knot nematodes. It is applied with 1-3 dichloropropane (Telone or DD) prior to planting the pineapple plant. Telone or DD alone cannot control rootknot nematodes, under wet soil conditions, or reniform nematodes under any soil conditions.[192] EDB can control reniform nematodes and is now used exclusively by Del Monte, one of the three big pineapple growers.[193] In 1978, DBCP was applied to 2,500 acres, of which about 1,850 belonged to Maui Pineapple Company. Castle & Cook, the other user of DBCP, applied DBCP on or about 700 acres in 1978, but its annual use ranges between 600 and 1,600 acres.[194] Thus, currently DBCP is apparently used annually on about 3,750 acres, since these three growers produce over 90% of the pineapples.

The EPA economist, Mr. Horst, estimated that there would be a 10 percent reduction over the four-year crop yield.[195] This estimate seems to be within the range of the rough estimate given by the industry witnesses.[196] Using Mr. Horst's assumption of 3,700 acres treated annually with DBCP, which also seems to agree with the testimony of the industry witnesses, the estimated loss in value of production would be $1.8 million, spread out over or perhaps crop yields. Offset against this would be the lower cost of EDB, estimated at $225,000.[197] The yield loss does not take into account figures based on the assumption that the loss in yield would be aggravated by the fact that fruit would deteriorate in size and quality each year because such estimates seem to represent a worst case.[198] The loss of $1.8 million spread out over two or possibly three crop years is not a significant loss for these pineapple growers. Maui Pineapple Co., who is most dependent on DBCP, is likely to experience the greatest impact. The total amount would represent only 3% of its estimated revenues for 1979.[199] There is no evidence that Del Monte, which has ceased using DBCP, is suffering any adverse economic effects.[200] In sum, it does not appear that the loss, if any, during the suspension period, is of a magnitude which would have any appreciable effect on production, prices, or employment.[201]

C. Citrus

The great majority of citrus produced in the United States in grown in Florida, California, Texas, and Arizona. In these states, DBCP is used for control of the citrus nematode (Tylenchulus semipenetraus) which attacks the roots of all citrus trees and diminishes their yield. Application can be by soil injection or by a water-run method. Nematicides are applied both preplant and postplant. Telone and D–D, however, are available as alternatives for preplant and appear to be as effective as DBCP.[202] For postplant treatment, oxamyl is available as an alternative on non-bearing trees, and Aldecarb is available as an alternative on orange-bearing trees. There are no available alternatives for other citrus products.[203] Thus, the suspension would affect these citrus growers principally who could not treat their citrus postplant during the suspension period.

Assuming a one-year suspension, the EPA economist, Mr. Luttner, estimated from field tests done in Florida and Arizona to determine the effect of postplant DBCP treatments on yield, that the yield on Florida treated acreage would be reduced about 13.2%, and the yield on acreage in Arizona and Texas would be reduced about 25.6%. About 18,000 acres or 1.5% of United States bearing acres would be effected.[204] He further estimated that a 13.2% production reduction could cause a loss in net return of $85 per acre. Seriously effected orange growers could use Aldicarb but the high cost of using this material (estimated at about $110 per acre) would probably eliminate most if not all of the gain from nematode control.[205]

[189] EPA Exhibit 35, at 23.

[190] Thus, for example, there has apparently been an oversupply of canned peaches in California which has resulted in a reduction of canning peach acreage through marketing orders. Tr. 5431.

[191] PGAH Ex. 3 at 1–3; Tr. 4457–60, 4694.

[192] PGAH Ex. 3 at 5; PGAH Ex. 5 at 4. DBCP also controls symphyllids where they are a problem.

[193] Tr. 4704, 4769. It may be less effective than DBCP, however, in controlling nematodes on wet soil conditions.

[194] Tr. 4480, 4771. References to pages 4456–4535 on pineapple are to volume 19 of the transcript.

[195] Tr. 5530.

[196] Tr. 4477–78, 4533–34; PGAH Ex. 5 at 6. The 20% estimate by Dr. Hepton does not evaluate how effective EDB would be as a replacement. Tr. 4517–18.

[197] EPA Ex. 34 at 15.

[198] See PGAH Ex. 3 at 7.

[199] PGAH Ex. 5 (Ex. 18) shows estimated revenues for 1979 for Maui Pineapple Co. of $55.4 million. See also Tr. 5658–69. It is argued that the pineapple industry is cyclical and so presumably profits may decline over the next year or two. Financial data for a much longer period than the ten years shown in PGAH Ex. 3 (Ex. 7) is needed to establish a cyclical trend.

[200] Tr. 5750.

[201] No attempt has been made to compute the present value of the total loss over the four-year crop period which would be incurred as a result of the year's suspension. Theoretically, the losses for the crop years subsequent to the year of suspension should be discounted to their present value. Tr. 5734–35. I am unable, however, to ascertain what would be a proper discount rate. See. Tr. 5746–48.

[202] EPA Ex. 35 at 27; Tr. 5258, 6691.

[203] EPA Ex. 35 at 27.

[204] EPA Ex. 35 at 37–47.

[205] EPA Ex. 35 at 49. The cost for DBCP is estimated at $25 per acre, which may or may not reflect its true cost to the grower. See *supra* at n. 178. The cost of Aldicarb is estimated at approximately $100 per hour. This latter cost is questionable if DBCP is applied by soil injection which would also require a tractor. In Florida, tractor-shank injection appears to be the principal method of application for citrus. Tr. 6681–82. It appears also that shank injection is used on a large proportion of the acreage in California treated with DBCP. Tr. 5392.

Since the data given is average data, it does not necessarily reflect what could be the effect on any one grower. There is no reason to assume, however, that any one grower will be more severely harmed than others. the yields for individual acres appear to vary from no observable effect to a severe decline.[206] Whether or not an affected grower who did experience the maximum loss on all his groves would leave the business over the short period of a suspension would presumably depend on whether he could still make a profit on his citrus products. The experience with respect to California where DBCP has been banned since August 1977, is again instructive. A citrus grower who had a nematode problem with her lemon acreage testified in this proceeding.[207] She received higher income in 1978 from acreage severely infested with nematodes than in 1977, and in fact higher than each of the previous three years, even though her yield had declined from 1,228 boxes per acre in 1977 to 699 boxes in 1978, because of the increase in prices during that period.[208] On one plot where the last DBCP application was in 1972, her production in the next four years was higher than the year of treatment. In 1977, the production on that plot was 1,228 boxes per acre compared to 728 boxes per acre in 1972.[209] Thus, the period of time for which a DBCP treatment can be beneficial appears to vary and not be ineluctably tied to a three-year period.

If in fact there were going to be immediate effects from the unavailability of DBCP, it is assumed that they would have shown up in California. Yet no data was presented that citrus growers were experiencing serious economic hardship as a result of not being able to use DBCP.

Consequently, it is concluded that the estimates given by Mr. Luttner for the economic effect of a one-year suspension on DBCP present a realistic appraisal of what could happen, but not what necessarily will happen. Production of citrus, including California production, could be reduced from 0.8% in oranges to 4.4% in lemons. Total estimated production losses net of DBCP treatment costs could amount to $11.8 million.[210] Consumer prices could rise if production is decreased sufficiently. The proportion of cost which would fall on producers, processors, and consumers, respectively, would depend on the economics of the market.

These losses in production and costs are only rough estimates. Most important, they do not provide a basis on this record for assuming that growers will be forced out of business or even will be unable to make a profit, or that employment in the industry will be reduced, or that consumers will be deprived of citrus foods.

D. Soybeans

Nematodes are only a problem in the growing of soybeans in the Southeastern United States.[211] Alternative nematicides are D-D, Telone, Mocap, Dasanet, Temik, and Nemacur.[212] It is indicated that D-D and Telone are not as effective, but the degree of reduced efficiency is not disclosed.[213] In 1976, DBCP was applied to about 5% of the acreage in the Southeast.[214] Since 1977, however, the use of DBCP on soybeans, because of its unavailability and high price, has decreased drastically and there is little being used at all today.[215] The losses estimated by Dr. Delvo of $7.1 million in the Southeast for a one year's suspension are probably too high because they were based on the assumption that the same amount of DBCP would be used as was being used in 1977.[216] There has been no evidence that any growers have been forced out of business or that soybean production has decreased significantly since 1977, even though it appears that DBCP use has declined considerably. Indeed, the economic loss, so far as it relates to decreased yield, appears to be principally the loss due to the fact that production of soybeans could be greater if DBCP were used in place of its alternatives.[217] Nor is there any evidence that increased application costs, resulting from the fact that D-D and Telone cannot be used at the time of planting, have affected the profitability of soybeans as a crop for individual growers. The overall impact of a suspension of DBCP on United States production of soybeans would be negligible because such a small percentage of acreage is planted to soybeans.[218]

It is concluded, therefore, that the costs of suspending DBCP for use on soybeans for one year and possibly even two years, do not outweigh the risk created by DBCP during that period.

E. Remaining Crops

The lack of evidence demonstrating that DBCP is vital to the continued production of any crop also applies to the other crops in which it is used.

Commercial turf. DBCP is used principally on golf courses. Taking Florida as a case study because DBCP is used extensively on golf courses there, it was estimated that nematicide costs using the alternatives Feramiphos and Ethoprop would increase by about $1.7 million. But there is no evidence that golf courses would have to close because of increased nematicide costs.[219]

Plums. Plums are grown almost entirely in California. There is no evidence that California growers are experiencing any declines in plum production as a result of not being able to use DBCP.[220]

Almonds. All domestic almonds are produced in California. Again, there is no evidence that almond growers are experiencing any decline as a result of not being able to use DBCP.[221]

Apricots, Cherries, Figs and Walnuts. Almost all apricots and walnuts, and all figs, are grown in California. California is also a major producer of cherries. DBCP use on these crops in California prior to the 1977 suspension was minimal, and there is no evidence that DBCP is used on cherries in states other than California to any significant extent. There is no evidence that the California suspension has affected production of any of these crops.[222]

Raspberries. DBCP can be applied preplant or postplant, but postplant appears to be more important. The only identified DBCP usage was in the states of Washington and Oregon. The published data indicates that usage is limited and that an effect of suspending DBCP would be localized and extremely minor.[223]

Boysenberries. DBCP is the only nematicide registered for postplant nematode control. The available information indicates, however, that it has only minimal importance in the production of this crop outside of California. The unavalability of DBCP in

[206] EPA Ex. 35 (Ex. 5).

[207] Amvac Ex. 13; Tr. 3368–3499.

[208] Tr. 3448–49; 3495.

[209] Tr. 3488–89. See also Tr. 5430.

[210] EPA Ex. 35 at 27, 55.

[211] Tr. 6905. If nematodes are discovered in other parts of the United States, they can be handled by other methods. Tr. 6906.

[212] Tr. 6983.

[213] Tr. 5200–01, 5214–17, 5225. Dr. Rodriguez-Kabana based his comparison of effectiveness on the cost of materials as well as on nematode control and yield. Tr. 5200. His estimate of cost, however, appears to have been based on its cost prior to its regulation by OSHA and without taking into account the great increase in the price of DBCP since 1977. Tr. 5170–71, *supra*, n. 178.

[214] Tr. 6926.

[215] Tr. 5174, 6903, 6931.

[216] See EPA Ex. 38 at 13; Tr. 7309–10.

[217] See Tr. 7014.

[218] See EPA Ex. 38 at 14.

[219] See EPA Ex. 34 at 18; Tr. 6028–30.

[220] EPA Ex. 35 at 37–63; Tr. 5308–90, 55.

[221] EPA Ex. 35 at 64–70, Tr. 5512.

[222] EPA Ex. 35 at 71–80.

[223] EPA Ex. 36 at 5–12; Tr. 6317, 6319.

California may have had some effect on production or new plantings of boysenberries (about 200 acres) there, but levels in production since the California suspension are unknown. Consequently, the available data does not indicate that producers will suffer or have suffered any significant production losses as a result of a one-year suspension of DBCP.[224]

Blackberries, blueberries, loganberries, and dewberries. DBCP usage data is not available, but it is estimated that usage is limited and that there would be no major effects on production from a one-year's suspension.[225]

Strawberry nursery stock. DBCP is the preferred postplant alternative in Maryland and Delaware, which appear to be the only two states where DBCP is used on a sizeable amount of acreage. Oxamyl and Aldicarb are also registered for postplant usage, but are not considered as effective and are more expensive. If DBCP is suspended for one year, increased treatment costs would be about $3,000 to $25,000 is Oxamyl is used, and an estimated $5,400 to $5,850 if Aldicarb is used. as a result of not being able to use DBCP, a grower's ability to produce plants which are nematode-free (nematode-infested plants cannot be sold), may also be adversely affected. If this occurs, there may be significant but localized effects on employees of affected nurseries who are unable to find alternative employment opportunities. Also, commercial strawberry growers who purchase strawberry stock may be affected by a reduced supply. While such adverse affects are possible, the extent to which they may actually occur cannot be estimated.[226]

Grapes. Over 90% of United States grapes are produced in California. Outside of California, DBCP is either not used or is not critical to grape production. DBCP is used postplant at one to three year intervals to control nematodes and is the only registered material for that use. Available data indicates that since 1977, yields in California production of raisin and table varieties have declined. The EPA economist, Mr. Horst, estimated that one-year suspension in California (if the California suspension were rescinded and simultaneously replaced by an EPA suspension) could result in decreased raisin, table grape, and wine production, which could cost producers of these crops from $7.32 million to $21.2 million. The table grape producers would bear most of the loss ($8.2 million to $16.3 million). An individual table grape grower such as the Thompson Seedless Company, would suffer reduced revenues of about $276 per acre.[227] Yield reductions may also result in nominal price increases to the consumer.

No evidence has been introduced showing that such declines in yields or revenue have actually occurred in California since 1977. Possibly this may be due in part to the fact that the DBCP treatment has lasted longer than one to three years. If this is so, it may well be that the effects could also last through a one-year suspension. In any event, the evidence does not show that grape growers will suffer such losses from a one- or possibly even two-year suspension as to force any grower out of business, or even under the present trend of prices, or even that he will suffer a loss.[228]

Cotton. DBCP is used to control nematodes by shank-injection either preplant or at the time of planting, currently because of its price and unavailability, DBCP is being used on only a small amount of acreage. Other producers are using D-D, Telone II, EDB, and Aldicarb to control nematodes or are using non-chemical cultural practices. There is evidence that the alternative materials would be less effective except under ideal conditions of soil and temperature, and there would be some decline in yield, but how great the decline would be is not disclosed.[229] Thus, the evidence indicates that a shift in production on the small acreage currently treated from DBCP to the most expensive alternative D-D, the annual cost of nematode control would increase by $38.25 per acre or a total of $530,000. This is the worst case and costs could be considerably lower if the other alternative were used.[230] While some growers conceivably could be more hurt than others, it does not appear that a year's suspension would cause any serious economic disruption of production of prices in cotton. Acreage planted to cotton has declined in some areas, but there is no evidence linking this up to decreased usage of DBCP.[231]

Vegetables (commercial Okra, snap beans, lima beans and southern peas). So far as growing snap beans for processing, nematodes are not a problem in states which account for about 91% of acreage in 1979. Most of the remaining crop is grown in Delaware, Maryland, and Virginia, and DBCP has been used on 25% of the snap bean acreage in the Delmarva Peninsula in that region. Ethoprop has been used as a substitute during the last two years, and while it is believed to be not as good, there is no evidence as to precisely how this would affect yield. In Delmarva, use of Ethoprop for DBCP would result in an estimated increase in material cost of $24.20 an acre plus additional applicator costs of $3.00 per acre because Ethoprop must be applied prior to planting while DBCP can be applied at the time of planting. There is no evidence to indicate that growers have been forced out of business as a result of such increased cost, and Ethoprop presumably has turned out to be a viable if possibly less effective alternative.[232]

So far as the fresh market is concerned, nematodes are a problem in Florida, Maryland, and Virginia, and somewhat of a problem in New Jersey. In New Jersey, crop rotation has solved the nematode problem. Ethoprop is used to replace DBCP in Delmarva peninsula and in Florida and Vorlex is also used in Florida. But again, data on actual crop losses is not available. If DBCP were suspended, it is estimated that the average per acre increase in control costs would be $37.85.[233]

With respect to lima beans, 43% in 1978 were grown in California. Another 24% were grown in Delaware and Maryland where there is a nematode problem. Ethoprop was used as a substitute in those states during the last two years. Increased application costs on DBCP-treated acres could increase by as much as $24 per acre if DBCP were suspended. There is no showing that growers in California have been hurt by the suspension there. Some growers have turned to Ethoprop, presumably because it is a viable alternative even if more costly.[234]

Southern peas. Data with respect to Georgia, which has about 44% of the acreage, shows a substantial portion of acreage was treated with DBCP in the past, but at present time growers are using D-D or EDB. If DBCP is suspended and growers presently using DBCP turned to the alternative, the costs for material and additional application costs could increase by as much as $18.37 per acre. There is no evidence that any grower has been forced out of business by virtue of the fact that he has changed from DBCP to one of the higher cost alternatives.[235]

[224] EPA Ex. 36 at 13-16.
[225] EPA Ex. 36 at 17-21; Tr. 6327.
[226] EPA Ex. 36 at 22-26; Tr. 6328-30.
[227] EPA Ex. 36 at 27-36; Tr. 6312.
[228] See Tr. 5389-90; 5512, 6275, 6312-13, 6362-64.
[229] Tr. 6381, 6384.
[230] EPA Ex. 37; Tr. 5114, 5137.
[231] Tr. 6396, 6399, 6401, 6404.
[232] EPA Ex. 38.
[233] EPA Ex. 38.
[234] EPA Ex. 38.
[235] EPA Ex. 38.

Okra. DBCP, when it was readily available, was used on about 95% of the okra acreage. Alternatives to DBCP for nematode control now being used are EDB, D-D, Vorlex and Telone. The cost of these substitutes could be as much as $9.00 per acre plus $3.00 per acre increased application costs. On acreage not treated with any fumigant, it was assumed that yield losses would be 70% of the crop. But there is no evidence to show what, if any, yield losses have in fact occurred as a result of using an alternative, and no showing that any grower has had to give up growing okra because of increased costs.

The evidence thus indicates that growers of commercial vegetables could incur increased nematode control of costs of $2.1 million if DBCP were suspended for one year.[236] On a national basis, the loss would be small, and while conceivably individual growers could be adversely affected there is no showing that any so far have been.

IV. The Indicated Benefits and Costs Do Not Outweigh the Risks

The responsibility to demonstrate that the benefits outweigh the risks is upon the proponents of continued registration. (*EDF, Inc.* v. *EPA (Shell Chemical Co.),* 510 F. 2d 1292, 1302 (D.C. Cir. 1975)). In weighing the benefits against risks, the statute places "a heavy burden on any administrative officer to explain the basis for his decision to permit the continued use of chemicals known to produce cancer in laboratory animals." *Id.*

The Administrator is his notice of suspension estimated that a one-year suspension of DBCP would result in a loss of approximately $42 million in production losses and increased costs of alternative chemicals. 44 FR 43335, 43339. I find that estimate to be on the high side on the basis of what is shown in this record. I also find that it is appropriate to disregard California production in estimating the costs. It seems unlikely that California will lift its suspension during the cancellation proceedings. Dr. Maddy was quite clear in his testimony that proceedings to reregister DBCP in California are being held in abeyance until California solves the water problem, and there is no evidence that a solution to that problem is imminent.[237] Assuming that production losses and increased control costs of the magnitude indicated by the Administrator could occur, there has been no showing that there will be any significant effect on any of the crop markets involved. The evidence with respect to California is particularly persuasive, for presumably if there were adverse short-term effects in suspending DBCP, they would presumably have shown up by now in that state. The one grower from that state, a citrus grower, was unable to show that her business had a decline in profits as a result of suspending DBCP. Similarly, in other states where DBCP has become unavailable or uneconomical to use, there has been no showing that individual growers have been forced out of business.

Decreases in supply, if large enough, can affect employment by growers and processors and handlers of the affected food crops. There has been no evidence in this record, other than conjecture, that employement will be so affected if DBCP is suspended for one year.

Consumers can also be affected by higher prices if supply is decreased enough. Again, there is no evidence, however, that the unavailability of DBCP for one year would create such shortages as to appreciably affect price.

In sum, there has simply been no evidence that the unavailability of DBCP for one year would so disrupt the normal market forces of demand and supply as to cause any serious dislocation in the production and marketing of any of the crops involved, or that this would happen even if DBCP were suspended for two years.

The Secretary of Agriculture for the United States has presented considerable testimony from nematologists and plant pathologists extolling the superiority of DBCP over other available pesticides in controlling many nematicide problems. It may well be that if DBCP cannot be used, growers with nematode infestations may not be able to make the most efficient use of their land during the suspension period because they are not obtaining either the maximum yield from their crop or the maximum return on their investment in the crop. But if the grower is not presently using DBCP, it is to be presumed either that the marginal benefit from using DBCP does not justify the cost, or that DBCP, while desirable, is not essential to the profitability of his business. If the grower must give up using DBCP, there may be some reduction in yield compared to what would have been realized if DBCP had been used. This reduction, however, could be offset by increased prices so that the grower's income stays at the same level at which he had been operating, and the record indicates that this has occurred in some crops. Further, even assuming a drop in income directly attributable to the suspension of DBCP, the reduction may not be so great as to cause affected growers to leave the market at least over the short-term. The economic consequences of suspending DBCP can presumably vary between individual growers, but the evidence on this record does not indicate that DBCP has been so essential that individual growers will, in fact, be forced out of the market or suffer severe losses during the suspension period.

The losses that may be suffered from the suspension of DBCP are conjectural. There are alternative means of dealing with the unavailability of DBCP and such financial losses as may result during the suspension may be recouped, if DBCP does again become available. The consequences of DBCP being permanently unavailable are not an issue here, and it cannot be assumed at this time that DBCP will be banned permanently. On the other hand, the risk of cancer, or of infertility, or of genetic damage during the suspension are real, and the effects may well be irreversible. Costs to growers and consumers in the form of decreased yield or higher prices, may be capable of some rough dollar and cents figure estimate. The costs to society of the damage to human health caused by exposure to DBCP may well be incalculable.

V. Conclusion and Recommended Action

On consideration of the entire record and of the briefs of the parties, and for the reasons stated, I find that the immediate suspension of all use of all registrations of pesticide products containing DBCP is necessary to prevent an imminent hazard during the time required for completion of the cancellation proceedings currently pending against this pesticide.

I recommend, accordingly, that the Administrator immediately suspend all registrations of pesticide products containing DBCP.

Order

The registrations of all pesticide products containing dibromochloropropane (DBCP), issued under the Federal Insecticide, Fungicide, and Rodenticide Act, are hereby suspended.

Gerald Harwood,
Administrative Law Judge.
October 20, 1979.

[236] It was also estimated that groves of okra would suffer a loss of about $300,000 if they used no alternative to DBCP.

[237] Tr. 603,606, 752, 825.

[FIFRA Docket No. 485]

Intent To Suspend Registrations of Pesticide Products Containing Dibromochloropropane (DBCP)

Final Decision

On October 22, 1979, after an expedited hearing on the question of whether certain uses of the pesticide dibromochloropropane (DBCP) pose an imminent hazard, the presiding officer, Administrative Law Judge Gerald Harwood, recommended suspension of all remaining registrations of DBCP products, pending completion of more lengthy administrative proceedings to determine the ultimate fate or registrability of these products under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA). After a thorough and careful assessment of the record, he found that the risks of cancer, mutagenicity and male sterility associated with the continued use of these products during the interim will outweigh the benefits of continued use during the same period. After considering the record of the proceeding and the parties' objections to the recommended decision, I hereby adopt and incorporate the recommended decision as part of this decision, together with the narrative findings, conclusions and reasons contained therein, subject, however, to one exception. The exception is the conclusion recommending suspension of DBCP for use in Hawaiian pineapple culture. I conclude that such use will not pose an imminent hazard during the period required to complete cancellation proceedings. My final order on the issue of suspension is attached.

Legal Background

No pesticide may be distributed, sold or otherwise placed in commerce unless it has been registered under section 3 of FIFRA. A pesticide is eligible for registration only if it is determined that, *inter alia*, "it will perform its intended function without unreasonable adverse effects on the environment." FIFRA, § 3(c)(5)(C). The term "unreasonable adverse effects on the environment" is defined in § 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide." In other words, the ultimate test of registrability hinges on balancing the risks associated with the use of a pesticide against its benefits. H.R. Rep. No. 92-511, 92d Cong., 1st Sess. at 14 (House Committee on Agriculture) ("* * * [T]he committee seeks to articulate the concept that the benefits of using a pesticide should be balanced against the risks of using them."); S. Rep. No. 92-838, 92d Cong., 2d Sess. at 4 (Senate Committee on Agriculture and Forestry) ("Pesticides therefore have important environmental effects, both beneficial and deleterious. Their wise control based on a careful balancing of benefit versus risk to determine what is best for man is essential.")

A pesticide registration remains in effect for five years, during which period the registrant has a continuing responsibility under § 6(a)(2) to submit any "additional factual information regarding unreasonable adverse effects on the environment." At any time prior to the 5-year automatic cancellation (at which time the pesticide may be reregistered), proceedings under § 6(b) of FIFRA may be initiated to cancel the registration if it is found that the pesticide, when used in accordance with widespread and commonly recognized practice, "generally causes unreasonable adverse effects on the environment." In such a case, a person adversely affected by the notice of intent to cancel may request a public hearing.

FIFRA Also provides that "[i]f the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation * * * proceedings," a notice of intent to suspend the registration may be issued pending completion of the cancellation proceedings. FIFRA , § 6(c)(1). Unless already done so, a notice of intent to cancel must be issued at the same time. The registrant may then request an expedited hearing on the issue of suspension pursuant to § 6(c)(2) of FIFRA. At the conclusion of the presentation of the evidence, FIFRA provides that the presiding officer has ten days to submit recommended findings and conclusions to the Administrator, who, in turn, has seven days to issue a final order. In cases of extreme emergency, a suspension order may be issued which takes effect immediately, prior to a hearing. FIFRA, § 6(c)(3).

The sole issue in a suspension proceeding is whether an imminent hazard exists. FIFRA , § 6(c)(1). The term "imminent hazard" is defined in § 2(1) of FIFRA as "a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would be *likely* to result in unreasonable adverse effects on the environment * * *." (Emphasis added.) In other words, "[t]he function of the suspension decision is to make a preliminary assessment of the evidence, and probabilities, not an ultimate resolution of difficult issues." *Environmental Defense Fund (EDF) v. Environmental Protection Agency (EPA)*, 510 F.2d 1292, 1298 (D.C. Cir. 1975), quoting *EDF v. EPA*, 465 F.2d 528, 537 (D.C. Cir. 1972). "The mere fact that the evidence * * * is not complete, or that more evidence may be expected to be developed in the cancellation proceedings is not a reason to deny suspension. Suspension is an interim remedy, to be determined on a record assembled on an expedited basis * * *." *In re Velsicol Chemical Corporation*, FIFRA Docket Nos. 145, etc. (Decison of the Administrator) 41 FR 7552, 7574 (February 19, 1976); *affirmed EDF v. EPA* 548 F.2d 998 (D.C. Cir. 1976), *cert. denied*, 431 U.S. 925 (1977).

It is clear that pesticide registrants and other proponents of continued registration have the burden of proving that the benefits of a pesticide outweigh the risks associated with its use. *EDF v. EPA*, 548 F.2d at 1004, 1012-1018. "[T]he Administrator is not required to establish that the product is unsafe in order to suspend registration. * * *" *EDF v. EPA, supra*. at 1004. EPA regulations governing the burden of proof in suspension proceedings provide that the Agency "* * * shall have the burden of going forward to present an affirmative case for the suspension. However, the ultimate burden of persuasion rests with the proponent of registration." 40 CFR 164.12(g). In other words, "* * * it is not the Agency's burden to establish the risk of harm, but rather the registrant's burden to disprove it once its safety has been called into question by a sufficient showing of probable risk." *In re Velsicol Chemical Corporation, supra* 41 FR 7574. As a consequence, significant uncertainties concerning a pesticide's risks and benefits are to be resolved in favor of public health while a fuller factual record is developed in the cancellation proceeding.

General Background

An expedited hearing in this proceeding was held at the request of several registrants after I issued a notice of intent to suspend DBCP registrations on July 18, 1979. The decision to issue the notice was based upon new information indicating that an earlier uncontested conditional suspension order issued on October 27, 1977 (42 FR 57543, November 3, 1977) was not adequate to satisfactorily reduce the

risks associated with continued use of DBCP even on an interim basis. The conditional suspension order allowed continued use of certain DBCP products subject to specified restrictions, including limiting use to certified applicators or persons under their direct supervision and requiring applicators to wear approved respirators and impermeable protective clothing while performing certain operations. It was believed that the permitted uses would not result in residues occurring in food crops, that the restrictions would prevent excessive applicator exposure, that little or no risk of other environmental contamination of human exposure would result, and that the benefits of continuing these DBCP uses subject to the prescribed restrictions outweighed any associated risks.

The new information indicated that the Agency's previous assumptions concerning the risks associated with these DBCP products were no longer valid. The information showed (1) that DBCP residues may occur even in crops which are not grown in contact with or in close proximity to treated soil, (2) that treatment with DBCP may result in contamination of water supplies, including drinking water sources and (3) that application of DBCP may result in DBCP ambient air levels outside the application site or at the application site several days after application. Accordingly, I found that potential exposure to DBCP still existed—potential exposure to the population at large through residues in treated crops and through contamination of drinking water, and potential dermal and inhalation exposure to applicators, farmworkers and others who live or work in the vicinity of the treated areas—and that the risks associated with these sources of potential exposure outweighed the benefits of continued use even on an interim basis.

Much of this information originated in the California Department of Food and Agriculture (CDFA) which began extensive studies of possible sources of DBCP exposure in late 1978. The registrations of all pesticides containing DBCP had been suspended in California by State authorities in 1977 after the discovery by the California Department of Health Services (CDHS) that a number of formulation plant workers became infertile from DBCP exposure. Amvac Ex. 3 at 1. The original objective of the CDFA studies was to determine levels of DBCP in the air, soil and irrigation water following application, and whether or not DBCP residues occurred in or on various treated crops. Later, as a result of the discovery of DBCP in wells located in areas where DBCP had been used, the studies were expanded to survey and sample wells. Between May 1979, and July 21, 1979, CDHS found DBCP in 36.6 percent of 527 samples taken. CDFA's own sampling of groundwater samples from domestic irrigation and municipal wells resulted in the discovery of DBCP in 90 of 258 wells tested. CDHS regarded the broad-scale contamination of drinking water supplies as a health hazard for residents of the affected communities in California. EPA Ex. 11 at 9-10.

When the information developed in California was combined with the results of other programs and assessed in light of animal bioassays establishing the carcinogenicity of DBCP, laboratory tests showing its mutagenicity and epidemiological studies correlating occupational exposure to DBCP with adverse effects on spermatogenesis, the current suspension notice was issued, on July 18, 1979. The earlier balancing of risks and benefits had undergone a radical shift and it was concluded that continued use of DBCP posed an imminent hazard.

As the presiding officer's recommended decision indicates, the risks associated with continued use of DBCP on an interim basis are real and substantial. DBCP must be regarded as a human carcinogen, mutagen and cause of adverse testicular effects. Farmworkers, pesticide applicators and the public at large are potentially exposed to DBCP in the food they eat, the water they drink and the air they breath, and depending upon their relative exposures to DBCP, they run varying degrees of risk of cancer, gene and chromosomal damage, and in the case of males, depressed sperm counts resulting in infertility. Eminent and well-qualified scientists have reached these conclusions on the basis of numerous and extensive studies. The evidence on carcinogenicity is particularly compelling in view of the number of studies and their results. Four bioassays in which DBCP was administered to experimental animals (rats and mice) by different routes (intubation, dermal, dietary, and inhalation) all resulted in positive findings of carcinogenicity, in some cases showing a 90 percent or greater increase in tumor incidence over non-exposed control animals. The site specificity of DBCP in inducing squamous cell carcinomas in the forestomach of the test animals through three different routes of exposure provides a concordance of results under differing test conditions which is especially significant. Further supportive evidence of DBCP's carcinogenicity is provided by short-term tests for mutagenicity. Four studies show that DBCP induces gene mutations and two show that it induces chromosomal mutations. Aside from providing supportive evidence of carcinogenicity, mutagens are also suspected of playing a role in the etiology of hereditary defects and heart disease. Mutations of gametic cells (egg or sperm) can be transferred from generation to generation, leaving a bizarre and cruel legacy for posterity. The mutagenic nature of DBCP is also consistent with the several epidemiologic studies correlating DBCP exposure with reduced spermatogenesis in pesticide applicators, farmworkers and factory workers. Several of the epidemiologic studies of factory workers which are part of the record of this proceeding were also utilized by the Occupational Safety and Health Administration (OSHA) in setting its 1 ppb (8 hour time-weighted average) permissible exposure level for workers in DBCP manufacturing and formulating plants.[1] Subsequent studies of agricultural workers to determine if they too experienced low sperm counts by reason of their potential exposure to DBCP confirmed that the problem of reduced spermatogenesis was not restricted to workers in manufacturing and formulating facilities.

Objections to the Recommended Decision

Objections to the presiding officer's recommended decision were filed on October 24, 1979, in accordance with 40 CFR 164.121(j)(4). The parties filing objections were Amvac Chemical Corporation (Amvac), the principal manufacturer and registrant of DBCP; The Gowan Company (Gowan) and Quimica Organica De Mexico, S.A. (QOMSA), registrant and intervenor, respectively; the Pineapple Growers Association of Hawaii and the State of Hawaii (PGAH); and the Secretary of Agriculture, United States Department of Agriculture (USDA). Respondent, Assistant Administrator for Toxic Substances, the proponent of suspension, filed a short statement in support of the recommended decision and attached a list of suggested revisions to the recommended decision to correct minor inaccuracies in the

[1] 43 FR 11514, 11522 (March 17, 1978). The OSHA exposure level is not based on an assumption that 1 ppb is "safe" or that a safe level of exposure exists. Instead, as required by the Occupational Safety and Health Act, it is based on a determination that the level set will minimize the hazards of cancer and sterility to the greatest extent possible "within the confines of (technological) feasibility."

findings.[2] No timely objections were received from any of the other parties.

Toxicity of DBCP. The presiding officer concluded that DBCP is a potential human carcinogen, that it causes adverse testicular effects in males and that it is a genetic toxin. No objections to these findings were filed by PGAH and USDA.[3] Only Amvac, Gowan and QOMSA objected to these conclusions regarding toxicity; however, their objections fail to persuade me that any material error was committed. On the contrary, the evidence is overwhelming in its support for the presiding officer's conclusions.

Amvac's objections are generally not sufficient to warrant extended discussion. I reach this conclusion recognizing that Amvac was the lead proponent of continued registration for all uses of DBCP. Amvac was a forceful and aggressive litigant in the suspension hearing, subjecting the other parties' witnesses to the scrutiny of cross-examination by experienced and well-trained counsel and presenting witnesses in support of its own position. Its brief and proposed findings, which were submitted to the presiding officer for consideration in preparing his recommended decision, reflect the same detailed attention to trial advocacy that one would expect in complex administrative litigation. The objections, on the other hand, are an entirely different matter. While each of the 82 enumerated objections identifies a specific finding or conclusion which Amvac asserts was erroneously adopted (or omitted, in the case of proposed findings which the presiding officer rejected), Amvac nevertheless fails to articulate the grounds for sustaining the objections; in general, there is nothing to explain why a particular finding or conclusion is supposedly erroneous. As a result, any wisdom tha Amvac might have to share from participating in this proceeding is hidden in the labyrinth of the record, which comprises some 7,300 transcript pages and roughly the same number of exhibit pages. The task of bringing this evidence together in the form of a decision which addresses the material issues and matters in dispute has already been ably performed by the presiding officer, and there is no need to repeat it in the absence of any indication of material error.[4] Accordingly, the following discussion is restricted to the few matters which Amvac has raised, together with Gowan and QOMSA, that arguably cross the threshold of sufficiency.

The recurrent and predominant theme of Amvac's case has been that there is no evidence to connect its products with the toxic effects observed in the various studies. The DBCP products used in those studies were manufactured by other companies, and Amvac's commercial grade DBCP is alleged to be significantly different from those products. According to Dr. Lester Friedman, Amvac's Director of Research and Development, "[a]n understanding of the nature of these differences and the significance therefore is one of the most important points to be understood in these proceedings." Amvac Ex. 15 at 3. Gowan and QOMSA similarly contend that the results of the toxicity studies cannot be attributed to their products.

The alleged significance of the differences arises from Amvac's claim that DBCP has not been isolated as the cause of the observed toxic effects (Objection 3, par. 5). Amvac asserts that the observed toxic effects may be attributable to chemical agents not found in its product; that Amvac's product is a high purity product which does not contain any epichlorohydrin and contains only trace amounts of allyl chloride and other low-boiling impurities (Objection 3, par. 3); that the amounts of allyl chloride and other low-boiling compounds in its products constitute less than 0.1 percent of its commercial product (Objection 3, par. 3); that the DBCP products used in the experimental studies contained epichlorohydrin and/or allyl chloride, as well as other impurities which alone or in combination with DBCP can account for the adverse effects observed (Objection 3, par. 4); that the study of Michael Weinstein (Amvac Ex. 10) showed no adverse effects using test material "representative" of Amvac's products (Brief in Support of Objections at 4); and that the evidence as to the composition of Amvac's product was uncontradicted (*Id.*). The presiding officer properly rejected these contentions.

Neither the DBCP products manufactured or sold by Amvac, Gowan and QOMSA nor the products used in the various toxicity studies consist of 100 percent "pure" DBCP. They all contain impurities in varying degrees—in some cases even after attempts at purification in the laboratory by fractional distillation. *See e.g.* Tr. 3945 (DBCP furnished by Amvac to Michael Weinstein). Dr. Friedman speculated that "if we were willing to expend the effort, (we probably could) make material that was 99.9 percent pure. And this is, you know, * * * an asymptotic point of no return." Tr. 3946.

The findings in the recommended decision are based on reliable evidence that demonstrates beyond any reasonable doubt that DBCP has been isolated as the source of the toxic effects. For instances, in one of the mutagenicity studies, the investigators tested the hypothesis that the mutagenic activity of DBCP observed in three previous studies might be accounted for by the presence of epichlorohydrin. Based on results comparing "technical grade" DBCP (96 percent DBCP, 1.9 percent epichlorohydrin, 0.6 percent allyl chloride, and 2.4 percent related halogenated C_3 compounds) with "pure" DBCP (99 percent DBCP and 1 percent related halogenated C_3 compounds), it was concluded that "(b)ecause of the mutagenicity of pure DBCP after metabolic activation, it would make little difference pragmatically whether or not the stabilizer epichlorohydrin was removed." EPA Ex. 6 (Ex. 4 at 307); Rec. Dec. at 43. This conclusion is significant not only insofar as the mutagenicity of DBCP is concerned, but also as it relates to carcinogenicity and male sterility, since mutagens provide suggestive evidence of a link between both other categories of adverse effects. *See* EPA Ex. 6 at 1–4. Studies have shown that 90 percent of the chemicals that are capable of causing cancer in humans or animals are capable of causing mutations in one or more test system. Rec. Dec. at 41. One study also indicated that DBCP was toxic to human sperm cells (Rec. Dec. at 44), and Dr. Picciano concluded that those results were consistent with experimental data which indicate that DBCP can interfere with spermatogenesis. EPA Ex. 6 at 3. As

[2] Attachment A to this decision contains a list of the recommended revisions which I have adopted.

[3] PGAH basically contends that notwithstanding the toxicity of DBCP, there is no significant risk of human exposure to DBCP from using it in Hawaiian pineapple culture, and therefore DBCP does not pose an imminent hazard under FIFRA. USDA basically asserts that the presiding officer did not give sufficient weight to the microeconomic benefits of continued use of DBCP on certain crops, primarily minor ones. USDA only inferentially suggests that certain uses should not be suspended.

[4] "There is no authority which precludes an appellate administrative tribunal from affirming the findings of a subordinate board without restatement." *United States* v. *Orr*, 474 F.2d 1365, 1369 (2d Cir. 1973). Thus, it has been held that "where the (Interstate Commerce) Commission finds no material error in the statement of facts and conclusions thereon by the hearing examiner, it is not required to prepare a detailed report as its own * * *" *Carolina Freight Carriers Corporation* v. *United States*, 323 F. Supp. 1290, 1296 (W.D.N.C. 1971). "No more is required [citations omitted]." *NLRB* v. *Process Corp.*, 412 F.2d 215, 217 (7th Cir. 1969). *Accord General Motors Corporation* v. *United States*, 33 Ad L 2d 278, 280–283 (E.D. Mich. 1973); *Borek Motor Sales, Inc.* v. *NLRB*, 425 F.2d 1312 (7th Cir. 1970); *American President Lines, Ltd.* v. *NLRB*, 340 F.2d 490, 492 (9th Cir. 1965); *In Re Shell Oil Company, et al.* at 2–3, FIFRA Docket Nos. 401, *et al.* (Denial of Motion for Reconsideration, dated June 6,1979).

noted by the presiding officer, mutagens, are also responsible for birth defects that occur in children. Rec. Dec. at 41. Approximately five percent of newborn babies have some type of demonstrable defect ranging from minor physical deviations to severe mental retardation. EPA Ex. 6 at 1.

Similarly, with respect to the carcinogenicity studies, it has been shown that the observed carcinogenic effects cannot be attributed to the presence of allyl chloride and epichlorohydrin (to the exclusion of DBCP). For example, there was no epichlorohydrin in the Dow-Hazelton study where 95 percent "pure" DBCP was administered in the diet of the test animals and statistically significant excess tumors were found in both high and low dose categories. Consequently, the adverse effects cannot be attributed to epichlorohydrin. Also, a comparison of the NCI study on allyl chloride with the Dow-Hazelton study on DBCP revealed that the tumors found in the Dow-Hazelton study could not be attributed to the 3.4 percent allyl chloride that was present in the DBCP test material. Based on a comparison of the number of tumors in both studies and the dosage levels administered, the dose level of allyl chloride in the NCI study on allyl chloride was 400 times greater than the dose level of allyl chloride in the Dow-Hazelton DBCP study, and yet, the number of tumors in the former were significantly lower than in the latter. *See generally* Rec. Dec. at 50–61. In other words, the "allyl chloride cannot have been responsible for the carcinogenic responses observed in the Dow-Hazelton (DBCP) studies." EPA Ex. 24 at 11. Consequently, whether or not the products manufactured by Amvac, Gowan and QOMSA contain no epichlorohydrin and only small amount of allyl chloride is immaterial to the issue of suspension, because DBCP has been shown by reliable evidence to be highly toxic and each of the products manufactured by Amvac, Gowan and QOMSA, by definition, contains high levels of DBCP.[5]

Amvac also contends that the epidemiology studies correlating potential exposure to DBCP with depressed sperm counts in agricultural and factory workers can not be relied on because they allegedly do not isolate and account for exposure to chemical agents other than DBCP. As a practical matter, this contention, if accepted, would invalidate any use of epidemiology studies for regulatory purposes.

Theoretically, the perfect study situation exists when there are two groups of test subjects which are exactly alike except for the one factor suspected of causing an adverse effect. However, one must study these groups as they exist in the natural environment, which means that it is seldom, if ever, possible to separate the two groups to the point where assurances can be given that the only difference that exists is exposure or nonexposure to the agent suspected of causing the adverse effect. As a consequence, epidemiology studies do not purport to demonstrate a cause and effect relationship; instead, they are designed to demonstrate a correlation (statistical association) between exposure and non-exposure to the suspect agent. The epidemiology studies in the record of this proceeding therefore focus on the significance of statistical relationships between potential exposure to DBCP and reduced spermatogenesis. And based on those studies, significant statistical relationships have been demonstrated which establish that there is a high degree of probability that potential exposure to DBCP is associated with the reduced spermatogenesis that has been observed in male factory and agricultural workers. The significance of these studies, particularly when considered in the aggregate, can not be discounted simply because all potential chemicals to which the study groups were exposed were not completely identified. As the presiding officer noted, "(t)he only factor which all exposed employees had in common was that they were potentially exposed to DBCP in their work, (regardless of what else they may have been exposed to), and the only factor which the non-exposed employees had in common was that, regardless of what else they may have been exposed to, they had not been potentially exposed to DBCP." Rec. Dec. at 31.

Risk of Exposure to DBCP. There obviously is no risk of cancer, mutagenicity or adverse testicular effects in males unless there is exposure to DBCP. The presiding officer found that the indicated routes of DBCP exposure are by inhalation of vapors, dermal contact and ingestion of contaminated food and drinking water. On the basis of extensive sampling studies, he concluded that DBCP is hazardous and that humans are likely to be exposed to it.

The exposure of most serious concern is the possibility of contamination in drinking water, because the indication is that it may be an inevitable consequence of using DBCP except where there is firm evidence, which is absent from this record, that geological conditions will foreclose contamination. Perhaps further studies or more complete knowledge about DBCP's transportation and persistence in the soil will provide the necessary information. These are, of course, matters which can more fully be inquired into in the cancellation case.

The fact that residues can occur in the food crops treated with DBCP is also of major concern. It is indicated that the residues result from the volatilization of DBCP during application or from DBCP-contaminated dust settling on the outside of the fruit and the leaves, rather than from DBCP entering the roots and translocating into the fruit. If this is so, then there may be a means for controlling this exposure by the use of fully closed systems for loading (which at the present time are not available), by closed system application, by appropriate application methods, by limiting the time of DBCP treatment, and by taking other measures to keep dust from DBCP-treated areas off the fruit. The record, however, does not permit an adequate determination of whether residues in food can effectively be so controlled, with the possible exception of pineapples. Again, these are also matters that can be considered in more detail at the cancellation hearing. (Rec. Dec. at 89–90.)

The one serious challenge to the exposure findings and conclusions was made by PGAH,[6] and in that instance, the challenge was based on the unique

[5] The presiding officer properly discounted the Weinstein study. Rec. Dec. at 50–51. Moreover, the DBCP furnished to him by Amvac is not "representative" of Amvac's commercial grade product as Amvac has repeatedly asserted. It was highly purified material that was obtained by fractional distillation in Amvac's laboratory. Tr. 3945. It was 99.7 percent "pure" DBCP, whereas Amvac's commercial grade product is 98 to 98.5 percent "pure" DBCP according to a gas chromatograph analysis submitted by Dr. Friedman. Amvac Ex. 15 at 2. According to Amvac's label registration the purity is actually somewhat less, 97 percent (EPA Ex. 26)! however, even if the higher purity percentage is accepted as correct, the remaining 1 to 1.5 percent of the commercial grade material contains twelve impurities (including .039 percent allyl chloride), which Dr. Friedman was only partially able to identify. Amvac Ex. 15 (Tab. 1); Tr. 3979–3983. The only evidence in the record regarding the specific content of Gowan's DBCP is its label registration, showing 82.4 percent DBCP, 2.6 percent other halogenated C_3 compounds and 15 percent inert ingredients; EPA Ex. 25. (Halogenated C_3 compounds include allyl chloride and epichlorohydrin. Tr. 3753–3754.)

[6] Amvac did argue in its brief that the presiding officer ignored the results of the "Ventura Studies" where no detectable residues of DBCP were found in the peeled fruit of navel oranges, valencia oranges and lemons. Brief in Support of Objections at 5. This argument is unpersuasive because it fails to take into account the fact that the recommendation to suspend DBCP for the citrus and other uses was also based in large part on the risk of ingestion of contaminated water. Furthermore, the Ventura Studies indicate that high residues of DBCP occur in the whole fruit, washed fruit and peelings. EPA Ex. 10 (Ex. 5). Residues in these portions of the fruit may transfer to the juice upon extraction, and citrus juice is, of course, a large component of the human diet. Tr. 1229–1230. For this reason, the Agency takes the whole fruit into account in establishing tolerances for pesticides in food. Tr. 1229; 40 CFR 180.1(j).

considerations that pertain to the use of DBCP in Hawaii, not to the use of DBCP elsewhere in the United States. Based on the presiding officer's own findings, it is apparent that there is no substantial likelihood that pineapple consumers, pineapple workers or the Hawaiian public will be exposed to DBCP pending cancellation hearings by any route of exposure, except possibly through ingestion of contaminated drinking water (obtained from high level aquifers, discussed below). However, the risk of exposure through that route does not appear to be significant in Hawaii, at least for the short term. Consequently, I decline to accept the recommendation to suspend registrations of DBCP for use on pineapple in Hawaii.[7]

The record and the presiding officer's findings indicate that DBCP use in pineapple culture is not likely to result in residues of DBCP in the fruit [8] and the number of workers potentially exposed to DBCP during application probably represents no more than a dozen individuals and they are unlikely to experience exposure levels that exceed the OSHA 1 ppb standard (over an eight hour time-weighted average). Tr. 4725–4732; Tr. 4494–4496; PGAH Ex. 3 at 8–9. While anywhere from 15 to 140 employees may be involved in harvesting a field, the first harvest does not occur until approximately 22 months after application. Tr. 4734–4735. In addition, only two of the three major companies (which collectively produce 90% of the commercial pineapple grown in Hawaii) are presently using DBCP. These findings are in marked contrast to findings relating to the use of DBCP in the continental United States where residues of DBCP in food crops pose a serious likelihood of exposure through ingestion, and the potential for agricultural worker exposure (including migrant farmworkers and their families who may live in or near treated fields and citrus groves for extended periods of time) through dermal contact and inhalation is greatly enhanced, and where it may be safely presumed that the agricultural practices of the hundreds of growers and applicators who use DBCP are less well known and therefore are likely to be of more concern it terms of farmworker and applicator exposure. *See generally* Amaya Exs. 4, 10–16.

The risk of exposure to DBCP in Hawaii through ingestion of contaminated drinking water is controlled in large part by subsoil geological and hydrological considerations that are unique to Hawaii and therefore are inapplicable to the continental United States. [9] Each island of the Hawaiian archipelago originated from volcanic eruptions of basic igneous rocks, and as a result, they are the emerged, eroded remnants of volcanic piles composed of heterogeneous layerings of a great many thin flows of lava. In Hawaii ground water is categorized as either basal or high level, with basal water occurring as a lens of fresh water floating on sea water beneath the land surface, but usually reaching no more than 25 feet above sea level. High level aquifers have no hydraulic continuity with the sea and lie either trapped between geologic dikes or perched on impermeable horizontal strata at relatively high elevations. Basal water is the most voluminous ground water source in Hawaii, and as the presiding officer noted, is the principal source of municipal drinking water. In a total of 29 ground water samples (thirteen by Maui Pineapple company and sixteen by EPA), taken primarily from basal aquifers, there was only one sample where DBCP was found in a well tapping basal waters and the concentration was 0.3 ppb [10] Rec. Dec. at 86–87; PGAH Ex. 5 (EX. 14). It came from an abandoned well which Mr. Mink testified was poorly constructed, and follow-up studies indicated that the well became contaminated through percolation from a perched aquifer (at the space between the casing and bore), not from percolation all the way down to the basal aquifer. Four other positive water samples were found containing trace or detectable concentrations of DBCP; however, the samples were obtained from perched water springs and seepages that do not appear to be likely sources of drinking water, even for private domestic use. PGAH Ex. 5 (Ex. 15); PGAH Ex. 4 at 15. All samples from municipal water supplies were negative, and Mr. Mink testified: "On the basis of the evidence so far collected in Hawaii, * * * one must conclude that use of DBCP in Hawaii is not resulting in contamination of public drinking water." PGAH Ex. 4 at 22; *see also* Tr. 4580 (not more than 10 private wells on Maui); Tr. 4580–4581 ("practically everyone" on Molokaiis served by a public system); PGAH Ex. 4 at 19–20, Tr. 5480 (all drinking water on Lanai is drawn from a single source hydrologically remote from the pineapple fields); PGAH Ex. 4 at 6–10 (no positive findings in public or private water samples).

While I agree with the presiding officer's findings that the evidence does not preclude the possibility of contamination of high level aquifers (Rec. Dec. at 87), and therefore, use of DBCP in Hawaii is not "home free" by any means, I am nevertheless convinced that the uncertainties which exist about possible drinking water contamination in Hawaii are not significant when compared, for example, with the uncertainties which exist about drinking water contamination in the southeastern United States. The uncertainties with respect to the latter (combined with the evidence of food contamination and the potential for farmworker exposure) have to be resolved against continued registration on an interim basis, whereas the uncertainties with respect to the situation in Hawaii (combined with the unlikely absence of other routes of exposure) are properly resolved in favor of continued registration on an interim basis. The situation in Hawaii is unique: The pertinent public health issues are comparatively discrete in terms of marking the outer boundaries of concern; the complexities introduced by multiple crop uses and agricultural practices are absent; and the evidentiary foundation is qualitatively and quantitatively superior. Consequently, notwithstanding my basic agreement with the presiding officer's findings, I have reached a different conclusion on the ultimate issue of suspension. In balancing the risks against the benefits with respect to continued use of DBCP in Hawaiian pineapple culture (which is essentially a quasi-legislative, rather than a fact-finding determination), I conclude that

[7] Pineapple is not grown commercially elsewhere in the United States and there is no evidence indicating that DBCP is used in pineapple culture in the Commonwealth of Puerto Rico or in any other jurisdiction subject to the registration requirements of FIFRA.

[8] Tests have shown no residues of DBCP in canned pineapple fruit. Rec. Dec. at 80. In two instances, involving pineapples taken from the extreme edge of a field which was immediately downwind from a field newly treated with DBCP, the samples were covered with dust from the newly treated field, and positive findings of DBCP in the flesh were found. PGAH Ex. 5 (Ex. 11); Rec. Dec. at 81. The samples were not washed prior to test preparation (as they would if processed for consumption), and the residues may have resulted from cross-contamination from the skin to the flesh when the knife used in the test was inserted into the flesh through the outer shell of the fruit. Tr. 4742–4746.

[9] Evidence relating to the geology and hydrology of Hawaii comes from Mr. John F. Mink, a ground water geologist who specializes in the hydrology and geology of the Hawaiian Islands and other islands of the Pacific ocean region PGAH Ex. 4. He neither professed nor appears to have any particular expertise in soil matters, particularly as they relate to the mainland. Tr. 4582–4583.

[10] Of the 527 water samples taken in California by the Sanitary Engineering Section of the California Department of Health Services, twelve percent contained DBCP at levels higher than 1.0 ppb. Rec. Dec. at 83; EPA Ex. 11 at 7. In twenty out of more than 100 community drinking water systems sampled in California, at least one ground water source showed DBCP at concentrations of 1 ppb. or higher. *Id.*

the benefits of continued use of DBCP in Hawaiian pineapple culture outweigh the risks associated with such use during the period required to complete the cancellation proceeding.

Amvac argues that there is no evidence to establish that there is now or is likely to be contamination of drinking water supplies outside of California and Arizona. The controversy over this issue arises from uncertainty as to the precise means by which DBCP has contaminated ground water in the Southwest. The record shows that there are three possible explanations: (1) Leaching of DBCP through the soil into the aquifer that supplies the well, (2) irrigation application of DBCP where treated irrigation water either seeps into an adjacent well or is siphoned back into the irrigation well when the pump is shut off (backflushing), and (3) the tapping of a drinking water well from the same aquifer as a well that has been contaminated. *See* Rec. Dec. at 84–85. However, there is no evidence in the record which definitely permits any one or two of the three explanations to be ruled out as a possible source of the contamination. For example, in the CDHS sampling of municipal well water systems, DBCP was found in many instances where the sampled well was of excellent construction, making surface runoff an unlikely explanation, since the wells were designed to protect the ground water from surface contamination. EPA Ex. 11 at 6. From data collected by CDHS (527 samples with 36.6% showing the presence of DBCP), Mr. Gaston concluded that it is "extremely unlikely" that contamination can be attributed just to irrigation practices. *See* EPA Ex. 11 at 10. Contamination as a result of leaching is consistent with findings showing that the highest concentrations of DBCP were found in the shallowest wells, and lower concentrations in the deeper ones (EPA Ex. 14 at 9–10). It is also consistent with evidence showing that DBCP can persist in the soil for years (EPA Ex. 14 at 5–7). In addition, as the presiding officer noted, no witness disputed the fact that DBCP can leach through the soil given proper conditions. Rec. Dec. at 85, n. 149.

The conditions that would promote or retard leaching are dependent upon complex interrelationships that, according to Mr. Guyman, "would require a document encompassing several text books, since the problem of DBCP transport in the soil is complex and is multi-disciplinary, including such disciplines as soil science, geology, chemistry, engineering, agriculture, mathematics, physics, plant science, and micrometeorology." Amvac Ex. 14 at 2–3. Factors that he identified as influencing leaching include: method of DBCP application, irrigation practices, crop condition, soil type, general geologic lithology of area, depth to water table or piezometric surface, type of aquifer, hydrogeologic conditions, climate conditions, construction and operation of wells, ground water quality and other factors. Amvac Ex. 14 at 5. In order to define the manner in which DBCP entered the well water in California, he suggested that further data should have been obtained on well construction, well lithology, local geology, cultural practices, ground water levels, and climatic conditions. Amvac Ex. 14 at 4. Consistent with Mr. Guyman's recommendations of the need for additional information is the testimony of Mr. Callahan, as noted in the recommended decision (Rec. Dec. at 88), where he testified that "more complete studies are needed in the Southeast to determine the environmental fate of DBCP." Gowan Ex. 3 at 4–5. This need for further information is not a matter that can be disputed. As I noted in the notice of intent to suspend, the possibility that a more thorough and complete sampling program (integrating use history and other data) will find DBCP in drinking water in the Southeast cannot be discounted.

Accordingly, I believe that it is too early to hypothesize as to why DBCP has only been found to date in the Southwest. Rather, because of the uncertainties as to the size of the population at risk, and because of the grave consequences to the health of that segment of the population which is exposed to DBCP in drinking water, I believe that prudence dictates that I make regulatory decisions based on the assumption that continued use of DBCP in accordance with the conditional suspension action may result in contamination of drinking water supplies. (Suspension Notice at 18.)

Based upon the record and the presiding officer's findings and conclusions with respect to the likelihood of leaching as a source of contamination of ground water, I believe that prudence still dictates that the uncertainties regarding the possibility of ground water contamination in the Southeast should be resolved in favor of protecting public health. The uncertainties in the Southeast are substantial, unlike the situation in Hawaii, and when they are combined with the evidence of food contamination in the crops that would be treated with DBCP in that area and with the potential for farmworker exposure, they have to be resolved against continued registration on an interim basis. The incompleteness of the evidence at the present time is not a reason to deny suspension especially where a more complete record can be developed in the cancellation proceeding.

Quantitative Assessment of Risk: Based upon the laboratory studies showing DBCP to be carcinogenic in laboratory animals, the Agency's Cancer Assessment Group (CAG) made a quantitative assessment of the human cancer risk posed by DBCP. As explained by Dr. Roy E. Albert, Chairman of CAG and Deputy Director of the Institute of Environmental Medicine, New York University Medical Center, the purpose of a quantitative risk assessment is to provide Agency decisionmakers with a "rough approximation" of the degree of cancer risk, and "one cannot hope to generate an estimate * * * that is more accurate than a crude, 'ball-park' figure." EPA Ex. 24 at 13; Rec. Dec. at 62. As explained by the Interagency Regulatory Liaison Group (IRLG) (Consumer Product Safety Commission, EPA, the Food and Drug Administration and the Occupational Safety and Health Administration),

> Despite the uncertainties, risk estimates can be and are being made, not only by some regulatory agencies but by other scientific bodies. Because of the uncertainties, however, and because of the serious public health consequences if the estimated risk were understated, it has become common practice to make cautious and prudent assumptions wherever they are needed to conduct a risk assessment. This approach has a precedent in some areas of public health protection where similar problems arise because of gaps in knowledge. Thus current methodologies, which permit only crude estimates of human risk, are designed to avoid understatement of the risk. It must be recognized, however, that in some circumstances this cannot be guaranteed because of other factors that may enhance human response, such as synergistic effects. Thus risk assessments should be used with caution in the regulatory process.
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> With the present state of knowledge, the quantitative assessment of cancer risks provides only a rough estimate of the magnitude of the cancer risks; this estimate may be useful in setting priorities for control of carcinogens and in obtaining a very rough idea of the magnitude of the public health problem posed by a given carcinogen. (44 FR 39858, 39871–39872 (July 6, 1979); EPA Ex. 24 (Ex. 2).)

CAG performed two separate quantitative assessments of risk: an assessment of the risk of cancer from ingesting DBCP-contaminated water and food, and an assessment of the risk of cancer from inhaling DBCP vapors. In performing the assessment, CAG assumed, *inter alia*, that residues in food would average 10 ppb for each of the

foods eaten, that the concentration in water would be 1 ppb and that the air concentration would be 10 ppb. These levels were chosen as upper limits for the purpose of the risk estimate in accordance with the conventional wisdom that cautious and prudent assumptions should be made.

Gowan and QOMSA contend that these assumptions are nevertheless unreasonable, citing examples of residue samples where the levels fell below these levels. However, it is clear from the record that other samples indicate that levels may and do in fact exceed these levels. Therefore the assumption made by CAG, while certainly cautious, is not unreasonable, and is within the state-of-the-art of quantitative risk assessment. Consistent with the inherent limitations of quantitative risk assessments, the presiding officer concluded:

> How these figures translate into the actual number of humans contracting cancer from DBCP in a year would depend on how many persons were exposed to DBCP, and what their exposure was. A person exposed to DBCP in drinking water and food and in the air he breathes would stand a greater chance of cancer than a person who only eats food containing DBCP residues. The probabilities of cancer, however, appear sufficiently great, particularly if a person is exposed to DBCP from all sources, to make DBCP an extremely hazardous pesticide. (Rec. Dec. at 65.)

More importantly, however, it must be observed that Gowan and QOMSA's objections are devoted exclusively to alleged deficiencies in the quantitative assessment of the risks of *cancer*, and they totally fail to account for the other risks of DBCP. However, as the presiding officer further stated: "When the risk of cancer is added to the uncalculated but nevertheless likely risk of sterility and mutagenic effects, it must be concluded that the risk of imminent harm to humans, during the year or possibly two it is assumed will be required for the cancellation proceedings, fully justifies banning DBCP * * *" Rec. Dec. at 65. In other words, the quantitative risk assessment for cancer is but one part (and perhaps only a small one) of the overall risks posed by continued use of DBCP. The epidemiologic evidence showing significant correlations between potential DBCP exposure and reduced spermatogenesis among agricultural workers, for example, is a strong indicator that the focus of concern about the public health implications of DBCP should be misdirected by limiting it solely to the carcinogenicity of the chemical.

Benefits of DBCP. When the notice of intent to suspend was issued on July 18, 1979, I concluded that the unavailability of DBCP would potentially result in approximately $42 million in production losses and increased costs of alternative chemicals. On balance, I found that these benefits did not outweigh the risks of continued use of DBCP during the period of time required to complete cancellation proceedings. This estimate of the benefits did not include losses attributable to the unavailability of DBCP in California. Where use of DBCP was suspended by state authorities in 1977 and where there was no information to indicate that California intended to lift its ban during the period required for completion of cancellation hearings. Nevertheless, I indicated that if the risks and benefits from use of DBCP in California were to be included, the risks would still outweigh the benefits. On the risk side, the population at risk would increase substantially, and on the benefits side, the potential losses would be approximately $101 million. California has not lifted its ban to date, and based on the testimony of Dr. Maddy from the California Department of Food and Agriculture and Mr. Gaston from the California Department of Health Services (GDHS), it appears unlikely that the ban would be lifted even in the absence of today's suspensison decision. I recognize that neither of these individuals would necessarily have final control over such a decision in the state, but based on their concerns about contamination of drinking water, which CDHS regards as a health hazard for residents of the affected California communities, the assumption that the ban would not be lifted appears reasonable.

The presiding officer found that the $42 million estimate which excludes consideration of California was on the "high side" based on the evidence in the record. Rec. Dec. at 112. He also found that the state ban is unlikely to be lifted since a solution to the water problem did not appear imminent. His conclusion that the original $42 million estimate appears to be high is reinforced by the fact that the unavailability of DBCP in California since the 1977 ban was not shown by any evidence in the record to have had a significant effect on any of the crops previously treated with DBCP. *Id.*

USDA conceded that the macroeconomic impact may indeed be minor, but argued that significant microeconomic impacts are also part of the picture and they may justify continued use of DBCP on relatively minor crops and commodities. USDA cites precedent for making such exceptions in the heptachlor/chlordane suspension proceeding. *See* 41 FR 7552 *et seq* (February 19, 1976).

As a general matter of principle, I agree with USDA that attentive consideration should be given to the economic effects of suspension on individual growers and to other microeconomic considerations—to the extent feasible in an expedited hearing. However, the cited precedent is not controlling; each pesticide suspension or cancellation proceeding by its very nature, is necessarily unique. More importantly, because of the extensive regulatory examination of DBCP that has already preceded today's action,[11] and the fact that substantial amounts of the information generated from these efforts are available to both proponents and opponents of continued registration, it is reasonable to expect, as I indicated in the notice of intent to suspend, that the time required to complete a cancellation proceeding for DBCP will be substantially less than would otherwise be required. Consequently, the period of time that individual growers will not have the benefits of continued use of DBCP, pending a final determination of the registration status of the product in a cancellation proceeding, will be shortened, and the losses, if the product is again made available (on some restricted or other basis), will likewise be less. As the presiding officer stated, "such financial losses as may result during the suspension *may* be recouped, if DBCP does again become available. The consequences of DBCP being permanently unavailable are not an issue here, and it cannot be assumed at this time that DBCP will be banned permanently." Rec. Dec. at 114 (emphasis added). In addition, unlike the heptachlor/chlordane suspension proceeding, where the sole risk under consideration was cancer, the risks here also include mutagenicity and male sterility. These additional risks must be factored into the decision to exempt minor uses from the suspension order. And in this instance, I conclude that they do not warrant such an exemption. Evidence presented by Amaya, *et al.* suggests that insensitivity to precautions necessary to protect agricultural workers may not be uncommon; and the testimony of one grower who testified on behalf of the peach growers organization indicated a dismaying inability to adhere to existing restrictions intended to protect individuals who are engaged in loading operations. Tr. 6596–6598. While the

[11] For a more complete discussion of the actions taken, see Part III of the notice of intent to suspend. 44 FR 43335 (July 24, 1979).

exact extent and nature of these factors are not set forth in the record, they raise enough uncertainty about the consequences of exempting minor uses that they cannot be discounted, even for an interim period of time. Furthermore, as the presiding officer stated, "the risk of cancer, or of infertility, or of genetic damage during the suspension are real, and the effects may well be irreversible. Costs to growers and consumers in the form of decreased yield or higher prices, may be capable of some rough dollar and cents figure estimate. The costs to society of the damage to human health caused by exposure to DBCP may well be incalculable." Rec. Dec. at 114–115. Finally, if it subsequently develops that the actual economic impact from suspension on minor uses of DBCP is much larger than anticipated, causing the risks/benefits to change in favor of exempting minor uses, procedures are available to have the suspension decision reconsidered and reversed. 40 CFR 164.130 *et seq.*

Procedural Issues. The presiding officer, in his prehearing rulings, directed that the risks aspects of the case would be tried first, followed by the benefits. In the recommended decision, he noted that while "there [generally] was a clear-cut division between risks and benefits," there "were areas where the distinction between risk and benefit could not always be clearly made," and further that "for the convenience of the witnesses," PGAH, pursuant to timely requests therefor, was allowed to present three witnesses at the same time although their testimony combined both risks and benefits.

USDA claims that the bifurcation of the proceeding into risks and benefits resulted in the erroneous exclusion of important and substantial evidence. For example, USDA sought to present evidence relating to the risks of using DBCP on peach crops during the benefits phase of the hearing. It argues that USDA Exs. 7B and 7C, which were excluded from the record (except as an offer of proof), would have provided information on the presence of residues on peaches in South Carolina and would have supported a proposal that continuation of the peach use only after harvest should solve the crop residue problem. An examination of these documents indicates that DBCP residues were found in peaches that have "never" been fumigated with DBCP and that levels as high as 29.0 ppb were found in peaches fumigated 144 days prior to harvest and 0.32 ppb 270 days prior to harvest. Therefore, to the extent that the exclusion of this evidence might be construed as error, it is obviously harmless error insofar as the issue of suspension is concerned. Moreover, USDA does not claim that it did not have adequate notice that the hearing would be separated into two phases, nor does it allege any compelling circumstances that would warrant granting its eleventh hour request to present evidence that clearly should have been presented earlier in accordance with the established order of proceeding. Under 5 U.S.C. 556(c)(5) the presiding officer is empowered to "regulate the course of the hearing," and that provision clearly vests him with authority to separate the presentation of the evidence into its most logical and natural components. Therefore, in excluding the proffered evidence, no error was in fact committed. It would be irrational not to separate the hearing into risk and benefit phases and given the expedited nature of this hearing, a greater showing of inability to comply with the established order of proceeding is needed than has been shown and alleged by USDA.[12]

USDA also argues, along with Amvac, that the presiding officer allegedly failed to comply with 5 U.S.C. 557(c) and 40 CFR 164.121(j) which require that the recommended decision include a statement of findings and conclusions. It is argued that the presiding officer's "narrative" discussion of the evidence, which encompasses 115 pages and 237 footnotes, has somehow disadvantaged them in filing their objections. USDA argues that it is difficult, "if not impossible," for it to accept or reject certain findings and to assess the "rationality" of the conclusions. These claims have no merit.

The purpose of requiring findings and conclusions is to advise the parties and any reviewing court of the basis for the decision, and the cited provisions were not intended to preclude use of narrative or expository forms of decision. Even the most casual examination of the recommended decision reveals its thoroughness in addressing the material issues, the evidence that was relied upon, and the basis for the conclusions that were reached. What is actually difficult, if not impossible, to assess, is not the presiding officer's findings of fact, conclusions and reasons, but rather how anyone could argue that the narrative form the decision affected or prejudiced their ability to file objections.

Conclusion. Based on the evidence in the record and the presiding officer's recommended decision, I conclude that continued use of DBCP, except in Hawaiian pineapple culture, during the time required to reach a final decision in the cancellation proceeding presents a substantial likelihood that serious harm to humans will occur. I further conclude that the risks associated with continued use of DBCP, except in the case of Hawaiian pineapple culture, outweigh the benefits of such use during the interim while cancellation proceedings are in progress. In arriving at the conclusion that the risks outweigh the benefits, I have taken into account the fact that state authorities in California have prohibited use of DBCP since 1977. The evidence in the record demonstrates that even if California were to lift its ban on DBCP, the risks of prospective use of DBCP in California would still clearly outweigh the benefits and that immediate suspension would be necessary as is implicit in the presiding officer's recommended decision. Accordingly, I find that immediate suspension of all such uses of DBCP with the exception of use in Hawaiian pineapple culture is necessary to prevent an imminent hazard.

Finally, as I emphasized in the notice of intent to suspend, I do not assume by taking this action that it will be impossible to develop terms and conditions of registration which will adequately reduce the potential for exposure to DBCP to levels that will not cause unreasonable adverse effects to man and the environment. The possibility of developing such terms and conditions will undoubtedly depend in large part on clarification of the uncertainties that surround the drinking water issue, in addition to the remaining questions that exist with the other potential routes of exposure. However, because of the uncertainties that remain at this time and because of the serious health consequences of exposure to DBCP that are shown by the evidence in the record of this proceeding, it would be imprudent and unwise to allow continued use while the answers to

[12] In support of its contention that "a bifurcation of subject matter in the proceeding * * * should not be a ground for complete exclusion of otherwise competent and relevant evidence," USDA argues that the sole test of admissibility must be whether the proffered evidence is reliable, probative and relevant. USDA apparently makes no allowances for the expedited nature of the proceeding, nor for the fact that the issue to be decided is whether continued use of the product during the time for completion of cancellation hearings is "likely" to cause "unreasonable adverse effects on the environment." While rigid adherence to the established order of proceeding (without making allowances for extenuating circumstances) might be grounds for error in the more relaxed atmosphere of a cancellation proceeding, no error is indicated in the context of this suspension proceeding. USDA's reliance on *Donnelly Garment Co. v. National Labor Relations Bd.*, 123 F. 2d 215, 224 (8th Cir. 1941) is misplaced, and if literally applied, would place an insurmountable roadblock in efforts to deal with the exigencies presented by an "imminent hazard."

these questions are being sought with respect to the uses that are being suspended.

Dated: October 29, 1979.

Douglas M. Costle,

Administrator.

Attachment A

Errata to Recommended Decision

1. Page 14, footnote 18: "0.6% epichlorohydrin" in the last line should be "0.06% epichlorohydrin". *Cf.* Rec. Dec. at 52; *see, also,* EPA Exhibit 3.

2. Page 30, footnote 40: In light of the demonstrated toxicity of DBCP to workers exposed to 0.6 ppm (*See, e.g.,* TR 275, 283), and OSHA 1 ppb permissible limit for exposed workers, the implication, in the first three sentences, that 0.4 ppm DBCP as an eight-hour time weighted average is a very small amount of exposure is incorrect.

3. Page 38, top paragraph: The reference to "Dow-Pittsburgh" in the third sentence was apparently intended to be a reference to "Shell-Denver", as the context of the immediately preceding and succeeding paragraphs suggests. *See* EPA Exhibit 9, Table 1, p. 15.

4. Page 44, top paragraph, last line: "non-disfunction" should be "non-disjunction."

5. Page 63, third paragraph: the first half of the first sentence should read: "Thus, it was determined that if a person ingested *DBCP* in the amount of $14{,}490 \times 10^{-10}$ mg per kg of body weight per day for a year from eating foods containing residues of DBCP, * * *." This would appear to be a transcription error from Table 2A to EPA Exhibit 24 (p. 21), which indicates that the unit D is the dietary exposure to DBCP in units of 10^{-10} mg/kg/day.

6. Page 64, top paragraph, last sentence: "10 ppb" should be "1 ppb", and the last sentence should read:

"It was also determined that if a person drank water containing *1 ppb* for a year, his or her chances of getting cancer would be approximately two in one million (2.09×10^{-6}).

This would also appear to be a transcription error. *See* EPA Exhibit 24, Table 2B (p. 22).

7. Page 84, second paragraph, last sentence: "Southwest" should be "Southeast".

8. Page 95, top paragraph, last sentence: "63,255 acres" is a typographical error, and should read "6,325 acres" to conform to the first sentence of that paragraph.

9. Page 99, footnote 193: "wet" should be "dry". *See,* e.g., PGAH Exhibit 3 at p. 5.

10. Page 105, top paragraph: the last sentence should read:

"The overall impact of a suspension of DBCP on United States production of soybeans would be negligible because such a small percentage of acreage (* * *) planted to soybeans *is treated with DBCP.*"

This would appear to be the Presiding Officer's intended finding and conclusion in light of his findings that in 1976 only 5% of Southeastern soybean acreage was treated with DBCP, and that "there is little being used to all today." (Rec. Dec. at 104)

[FIFRA Docket No. 485]

Intend to Suspend Registrations of Pesticide Products Containing Dibromochloropropane (DBCP)

Suspension Order

The registrations issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.,* including interim registration amendments pending or granted under the suspension order of October 27, 1977 (42 FR 57543, November 3, 1977), for the following uses of pesticide products containing dibromochloropropane (DBCP) are hereby suspended and any further use of such products or their sale, distribution or other movement in commerce is prohibited: Cotton, soybeans, citrus, grapes, pineapples (except in Hawaii), peaches, nectarines, plums, almonds, commercial okra, commercial lima beans, commercial snap beans, commercial southern peas, berries (blackberries, blueberries, loganberries, dewberries, boysenberries, raspberries), strawberry nursery stock, apricots, cherries, figs, walnuts, bananas, turf (commercial and residential) and ornamentals (commercial and residential).

Dated: October 29, 1979.

Douglas M. Costle,

Administrator.

Intent To Cancel the Registrations of Pesticide Products Containing Dibromochloropropane (DBCP), and Statement of Reasons

I. Introduction

On October 27, 1977, pursuant to § 6 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA") (7 U.S.C. 136 *et seq.*), I issued a Suspension Order (42 FR 57543, November 3, 1977) which suspended unconditionally the registrations of pesticide products containing dibromochloropropane ("DBCP") for use on 19 specific crops [13] and which suspended conditionally the registrations of pesticide products containing DBCP for all other end uses.[14] Today, by separate action, I am suspending unconditionally the registrations of all pesticide products containing DBCP for all but one of the uses (pineapples) which were previously suspended conditionally, based on my determination that such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings.

Pursuant to § 6(b)(1) of FIFRA, this Notice announces my intent to cancel unconditionally all remaining end uses of all registered pesticide products containing DBCP, and sets forth my statement of reasons. As set forth more fully below, I find that the continued use of pesticide products containing DBCP will cause unreasonable adverse effects on the environment when used in accordance with current terms and conditions of registration and widespread and commonly recognized practice, and that the labeling of DBCP products for all uses does not comply with the provisions of FIFRA.[15]

This Notice is organized into four sections. Section I is this introduction. Section II is a discussion of the applicable legal authority. Section III sets forth my findings on unreasonable adverse effects on the environment and initiates cancellation proceedings. Section IV discusses procedural matters, including the rule against ex parte communications, instructions on how to request a hearing, and my waiver of external review requirements.

[13] The unconditionally suspended uses are: Broccoli, brussel sprouts, cabbage, carrots, cauliflower, celery, cucumbers, eggplant, endive, lettuce, melons, parsnips, peanuts, peppers, radishes, squash, strawberries (except for nursery stock which is not allowed to fruit until after being transplanted), tomatoes and turnips.

[14] The remaining end uses which were conditionally suspended are: Cotton, soybeans, citrus, grapes, pineapples, peaches, nectarines, plums, almonds, okra, lima beans, snap beans, southern peas, berries (blackberries, blueberries, loganberries, dewberries, boysenberries, raspberries), strawberry nursery stock, apricots, cherries, figs, walnuts, bananas, turf (commercial and residential) and ornamentals (commercial and residential).

[15] This Notice satisfies the requirements of § 6(c) of FIFRA that an order of suspension be accompanied or preceded by a notice under § 6(b) of FIFRA. It would also appear that a final § 6(b)(2) notice would be legally sufficient to support an order of suspension under § 6(c), because a cancellation *proceeding* can be initiated by *either* a § 6(b)(1) notice or a § 6(b)(2) notice. A proposed § 6(b)(2) notice covering the DBCP uses in question is currently outstanding (44 FR 11822, March 2, 1979), and I considered finalizing this § 6(b)(2) notice in lieu of issuing a § 6(b)(1) notice. This option was rejected, however, in part in order to avoid potential litigation on the technical procedural issue of whether a § 6(b)(2) notice can support an order of suspension.

II. Legal Authority

Section 6(b) of FIFRA authorizes the Administrator to issue a notice of intent to cancel the registration of a pesticide or to change its classification if it appears to him that the pesticide or its labeling "does not comply with the provisions of (FIFRA) or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment." Thus, the Administrator may cancel the registration of a pesticide whenever he determines that it no longer satisfies the statutory standard for registration which requires (among other things) that the pesticide "perform its intended function without unreasonable adverse effects on the environment" (FIFRA § 3(c)(5)). He may also change the classification of any use of a pesticide if he determines that such a change "is necessary to prevent unreasonable adverse effects on the environment" (FIFRA § 3(c)(2)). "Unreasonable adverse effects on the environment" means "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 § 2(bb)).

The burden of proof for establishing the safety of a pesticide product to support a decision concerning registration or continued registration rests at all times on the proponent of registration. *Environmental Defense Fund ("EDF")* v. *Environmental Protection Agency ("EPA")*, 465 F. 2d 528, 532 (D.C. Cir. 1972); *EDF* v. *EPA*, 510 F. 2d 1293, 1297 (D.C. Cir. 1975); *EDF* v. *EPA*, 548 F. 2d 998, 1004 (D.C. Cir. 1976), *cert. denied* 431 U.S. 925 (1977).

In effect, FIFRA requires the Administrator to weigh the risks and benefits associated with each use of a pesticide. If he determines for any particular use that the risks exceed the benefits, the registration of the pesticide for that use must be cancelled unless he determines that the risks of the use can be sufficiently reduced (so that they are outweighed by the benefits) by the imposition of restrictions upon use through changes in the labeling and/or by the classification of the use for restricted use.

III. Reasons for Initiating Cancellation Proceedings

A. *Risks.* I find that DBCP causes cancer in laboratory animals and must be regarded as posing risks of cancer to humans; that DBCP is a testicular toxin in humans which is capable of adversely affecting testicular function and interfering with spermatogenesis; and that DBCP is an animal and human mutagen which causes mutations both in somatic (body) cells and gametic (reproductive) cells—the latter of which can result in the transmission of heritable defects to future generations.

I also find that human exposure to DBCP may occur as the result of consumption of drinking water contaminated with DBCP; consumption of residues of DBCP in crops grown in soil treated with DBCP; inhalation of ambient air levels of DBCP in or around treated fields; and dermal contact with DBCP either during application and related procedures, or from residues in soil or on bark and foliage.

Based on the available data concerning the toxic effects of DBCP and concerning potential human exposure to DBCP, I conclude that use of DBCP in accordance with current terms and conditions of registration and widespread and commonly recognized practice poses significant risks of adverse human health effects.

B. *Benefits.* DBCP is an active ingredient in pesticide soil fumigants intended for nematode control, and may be applied pre-plant, at-plant or post-plant for its various registered uses. There are registered pesticide alternatives for all pre-plant uses of DBCP. With respect to post-plant uses on most perennial crops, however—including such crops as citrus, grapes, stone fruits, berries and almonds—no alternative pesticides are currently registered, and some decline in production of these crops, with attendant price increases, may be expected to occur if DBCP is cancelled.

Taking into account the impact of a DBCP cancellation on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, I conclude that the macroeconomic impacts of a DBCP cancellation would be negligible, notwithstanding potentially severe impacts on certain isolated sectors of the agricultural economy. I also conclude that inflation and agriculturally-related employment would not be measurably affected by a DBCP cancellation, and that the average per capita food budget would not be measurably increased.

C. *Unreasonable Adverse Effects.* On the basis of information currently available, I conclude that the risks presented by use of DBCP in accordance with current terms and conditions of registration and widespread and commonly recognized practice appear to outweigh benefits of such use. For these reasons, I conclude that use of DBCP in accordance with current terms and conditions of registration and widespread and commonly recognized practice appears to generally cause unreasonable adverse effects on the environment, as that term is defined in § 2(bb) of FIFRA, and that the labeling of DBCP products does not comply with the provisions of FIFRA. Accordingly, I am hereby initiating proceedings to cancel unconditionally all remaining end uses of all registered pesticide products containing DBCP.

IV. Procedural Matters

This Notice initiates actions to cancel unconditionally all remaining end uses of registered pesticide products containing DBCP. Under § 6(b) of FIFRA, registrants and other persons adversely affected by this Notice may request a hearing on the cancellation actions that this Notice initiates. This section explains the prohibition against *ex parte* communications; when and how affected persons may request a hearing; the consequences of filing or of failing to file a request for a hearing in accordance with the procedures specified in this Notice; and my waiver of external review.

A. *Ex Parte Communications.* The Agency's Rules of Practice for hearings conducted pursuant to § 6 of FIFRA forbid the Administrator, the Judicial Officer, and the Administrative Law Judge, at all stages of the proceedings, from discussing the merits of the proceedings *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in an investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following Agency offices, and the staffs thereof, are designated to perform all investigative and prosecutorial functions in this case: the Office of Toxic Substances, the Office of Pesticide Programs, the Office of General Counsel, and the Office of Enforcement.

From the date of this notice until any final decision, neither the Administrative Law Judge, the Judicial Officer nor myself shall have any *ex parte* contact or communication with any investigative or trial staff employee, or any other interested persons not employed by EPA, on any of the issues involved in this proceeding. However, persons interested in this case should feel free to contact any other EPA employee, including both investigative and trial staff, with any questions they may have.

B. *Procedures for Requesting a Hearing* (1) *Deadline for Requesting a Hearing.* Registrants affected by the cancellation actions initiated by this Notice may request a hearing on specific

registered uses of specific registered pesticide products containing DBCP within thirty (30) days of receipt of this Notice, or on or before December 10, 1979, whichever occurs later. Any other person adversely affected by the cancellation actions initiated by this Notice may request a hearing on specific registered uses of specific registered pesticide products containing DBCP within thirty (30) days of the date of publication of this Notice in the Federal Register.

(2) *How to Request a Hearing.* All registrants and other adversely affected persons who request a hearing must file the request in accordance with the Agency's Rules of Practice for hearings under § 6 of FIFRA (40 CFR Part 164). Among other things, each hearing request must satisfy the following requirements: (1) It must specifically identify the registration number(s) of the pesticide product (s) for which a hearing is requested; (2) it must be accompanied by objections that are specific *for each use* of the identified pesticide product(s) for which a hearing is requested; and (3) it must be *received* by the Hearing Clerk within the applicable thirty (30) day period. Failure to comply with these requirements will automatically result in denial of the request for a hearing.

Requests for hearings must be submitted to:

Hearing Clerk (A-100), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

C. *Consequences of Filing or Failing To File a Hearing Request.* (1) If a hearing on the cancellation of a specific registered use of a specific registered pesticide product containing DBCP is requested in an timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for hearings under § 6 of FIFRA (40 CFR Part 164). In the event of a hearing, the cancellation action(s) subject to the hearing will not become effective except pursuant to orders of the Administrator at the conclusion of the hearings.

(2) If a hearing on the cancellation of a specific registered use of a specific registered pesticide product containing DBCP is not requested in accordance with the procedures specified above within the applicable thirty (30) day period, the cancellation action will become final and effective by operation of law.

In this regard, it is important to emphasize that the cancellation actions initiated by this Notice will be implemented on a use-by-use and registration-by-registration basis. In other words, if a hearing is not timely requested with respect to specific registered uses of a specific registered pesticide product containing DBCP, *those uses of that registration will be cancelled* notwithstanding that hearings may have been timely requested with respect to *other* registered pesticide products containing DBCP with identical registered uses.

D. *Waiver of External Review.* Section 6(b) and 25(d) of FIFRA require proposed notices of intent issued under § 6(b) to be referred to the Secretary of Agriculture (USDA) and the Agency's FIFRA Scientific Advisory Panel (SAP) for prior review and comment. In this case, it would appear that the requirements of § 6(b) and § 25(d) have been satisfied by the previous referral to those bodies of a notice of intent to hold a hearing under § 6(b)(2) of FIFRA, [16] since the issues previously presented to them are virtually identical to the issues which would be presented by referral of this Notice. In any event, since I have found that unconditional suspension of the registrations of pesticide products containing DBCP for all end uses (except pineapples) is necessary to prevent an imminent hazard to human health, I hereby waiver any requirement of further notice to and consultation with USDA and SAP with respect to this Notice, as I am authorized to do under § 6(b) of FIFRA.

Dated: October 29, 1979.

Douglas M. Costle,

Administrator.

[16] Notice of Intent to Hold a Hearing to Determine Whether or Not the Registrations of Pesticide Products Containing DBCP Should Be Cancelled, and Statement of Issues (44 FR 11822, March 2, 1979). For a more complete discussion of the complex procedural history concerning DBCP, see Part III of my Notice of Intent to Suspend Registrations of Pesticide Products Containing Dibromochloropropane (DBCP) (44 FR 43335, July 24, 1979).

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
		(00148) 10/26/79				
00148	Thompson-Hayward Chemical Company, 5200 Speaker Road, Kansas City, KS 66106 9133213131.					
01068	T-H Nematocide 44-E		042172	21	0670	1
01071	T-H 10% Granular Nematocide		042172	21	0272	2
	Number of products listed: 2.					
		(00201) 10/26/79				
000201	Shell Chemical Company, Agricultural Division, 1025 Connecticut Ave. NW., Suite 200, Washington, DC 20036 2022963633.					
	Product name:					
00140	Nemagon C Soil Fumigant		030564	21	0373	2
00149	Nemagon 8.6 E.C. Emul. Concentrate Soil Fumigant.		092071	21	0573	2
00151	Nemagon 12.1C Concentrate Soil Fumigant		092071	21	0573	2
00203	17.3% Nemagon Soil Fumigant Granules		112566	21	0573	3
00211	Nemagon 12.1 E.C. Emulsible Concentrate Soil Fumigant.		020568	21	0174	2
00217	Shell Technical Nemagon Soil Fumigant for manufacturing purposes only.		041967	21	0467	2
05879	Nemagon 12.1 E.C. Emulsible Concentrate Soil Fumigant.	Florida	010176	21	0176	3
05880	34.6% Nemagon (R) Soil Fumigant Granules	North Carolina	093075	21	0176	2
05881	Nemagon 12.1 E.C. Soil Fumigant Tank Mix with Vernam.	North Carolina	010176	21	0176	3
05882	Nemagon 12.1 E.C. Emulsible Concentrate Soil Fumigant.	Texas	010176	21	0176	2
05947	Nemagon 12.1 C Concentrate Soil Fumigant	California	010176	21	0176	2
05948	Nemagon 12.1 E.C.	California	093075	21	0176	2
05949	Nemagon 8.6 E.C. Emulsible Concentrate Soil Fumigant.	California	010176	21	0176	2
05951	D-D Nemagon Soil Fumigant	Hawaii	010176	21	0176	2
	Number of products listed: 14.					

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
	(00226) 10/26/79					
000226	Tobacco States Chemical Company, P.O. Box 12046, Lexington, KY 40580 6062331446.					
	Product name:					
00191	Tobacco States Brand Nemagon E.C. Soil Fumigant.		092170	21	0970	2
	Number of products listed: 1.					
	(00239) 10/26/79					
000239	Chevron Chemical Company, Ortho Division, 940 Hensley Way, Richmond, CA 94804 4152359300.					
	Product name:					
01939	Ortho Nemagon 70 Soil Fumigant		052664	21	0472	2
	Number of products listed: 1.					
	(00464) 10/26/79					
000464	Dow Chemical U.S.A., P.O. Box 1706, Midland MI 48640 5176361000.					
	Product name:					
00313	Fumazone 86		111363	21	0475	2
00322	Fumazone 86E		103067	21	0673	2
00371	Dow Fumazone EC Nematocide		111568	21	0373	2
00445	Fumazone 70E		021373	21	0374	2
00479	Fumazone F		062973	21	1274	2
06852	Fumazone 86E	Texas	010176	21	0176	2
06854	Fumazone 86E	Texas	010176	21	0176	2
06855	Fumazone 86E	Tennessee	010176	21	0176	2
06856	Fumazone 86E	Oklahoma	010176	21	0176	2
06857	Fumazone 86E	North Carolina	010176	21	0176	2
06858	Fumazone 86E	North Carolina	010176	21	0176	2
06859	Fumazone 86E	Missouri	010176	21	0176	2
06860	Fumazone 86E	Mississippi	010176	21	0176	2
06861	Fumazone 86E	Louisiana	010176	21	0176	2
06862	Fumazone 86E	California	010176	21	0176	2
06863	Fumazone 86E	Mississippi	010176	21	0176	3
06864	Fumazone 86	California	010176	21	0176	3
06865	Fumazone 86E	Alabama	010176	21	0176	2
	Number of products listed: 18.					
	(00539) 10/26/79					
000539	Sears Roebuck & Company, Sears Tower/Dept. 671/15th floor, Sears Tower Dept. 671/15th floor, Chicago, IL 60684 3128755423.					
	Product name:					
00250	Sears Nematode Killer Granules		100968	21	1068	3
09225	Sears Nemagon Granules	Florida	010176	21	0176	2
09227	Sears Nemagon Liquid	Florida	010176	21	0176	2
	Number of products listed: 3.					
	(00557) 10/26/79					
000557	Swift Agricultural Chemical Corp., 30 North LaSalle St., Chicago, IL 60604. 3124312542					
	Product name:					
01875	Swift Nemagon 86E		021075	21	0275	2
	Number of products listed: 1.					
	(00635) 10/26/79					
000635	Grower Service Corp., Div. of Grower Service Corp., Box 18037, Lansing MI 48901 5173232125.					
	Product name:					
00418	Nemagon Soil Fumigant		012566	21	1170	2
	Number of products listed: 1.					
	(00728) 10/26/79					
000728	Southland Pearson & Co., P.O. Box 7151, Mobile, AL 36697 2054568456.					
	Product name:					
00066	Pearson's 10% Nema-Kill		061165	21	0971	3
00067	Pearson's 5% Nema-Kill		061165	21	0367	3
	Number of products listed: 2.					
	(00769) 10/26/79					
000769	Wool Folk Chemical Works, Inc., P.O. Box 938, Ft. Valley, GA 31030 9198255511.					

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
	(00769) 10/26/79—Continued					
	Product name:					
00334	Security Brand 10% Nemagon Granulated		122164	21	1169	3
00344	Security Brand 25% Nemagon Granulated		062165	21	1071	3
	Number of products listed: 2.					
	(00829) 10/26/79					
000829	Southern Agricultural Insecticides Inc., Box 218, Palmetto FL 38561 8137223285.					
	Product name:					
00156	SA-50 Brand Nemagon Emulsible Concentrate		060565	21	0569	2
00157	SA-50 Brand 17.3% Nemagon Soil Fumigant Granules.		062565	21	0671	2
	Number of products listed: 2.					
	(00869) 10/26/79					
000869	Green Light Company, P.O. Box 17965, San Antonio, TX 78217 5124943481.					
	Product name:					
00063	Green Light Namalode Killer		072764	21	0976	3
	Number of products listed: 11.					
	(00904) 10/26/79					
000904	Miller Chemical & Fertilizer Corp., Pratt-Grabiel Division, Box 333, Hanover, PA 17331 2016844797.					
	Product name:					
00154	Pratt Nemagon Soil Fumigant Emulsible Concentrate.		021767	21	0267	2
	Number of products listed: 1.					
	(00909) 10/26/79					
000909	Cooke Laboratory Products, 4759 S. Durfee Ave., P.O. Box 877, Pico Rivera, CA 90660 2136927291.					
	Product name:					
04691	Cooke Garden-Fume	California	010176	21	0176	2
	Number of products listed: 1.					
	(01022) 10/26/79					
001022	Chapman Chemical Company, Box 9158, Memphis, TN 38109 9013965151.					
	Product name:					
00406	Chapman Nemagon Soil Fumigant		070567	21	0667	2
	Number of products listed: 1.					
	(01202) 10/26/79					
001202	Puregro Company, 1111 W. 6th Street, Los Angeles, CA 90017 2134867502.					
	Product name:					
05092	Puregro DBCP 12.1 Soil Fumigant	California	010176	21	0176	2
	Number of products listed: 1.					
	(01598) 10/26/79					
001598	Fox Inc., P.O. Box 2419, Raleigh, NC 27642.					
	Product name:					
00152	FOX Nemagon 173 "G"		030770	21	0670	2
	Number of products listed: 1.					
	(01842) 10/26/79					
001842	Triangle Chemical Company, Box 4528, Macon, GA 31208 9127431548.					
	Product name:					
00218	Triangle 30% Nemagon Granules		032166	21	0671	2
	Number of products listed: 1.					

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
	(02015) 10/26/79					
002015	Tolchand Chemical Corporation, West Palm Beach, FL.					
	Product name:					
05948	Nemagon 12.1 EC Emulsible Concentrate Soil fumigant.	California	010176	21	0176	2
	Number of products listed: 1.					
	(02342) 10/26/79					
002342	Kerr-McGee Chemical Corp., Mgr. Pkg. & Labeling, Kerr-McGee Center, Oklahoma City, OK 73125 4052701313.					
00602	Fasco Nemagon 70EC		042964	21	0273	2
00610	Fasco Nemagon Granular 346		071364	21	0373	2
00612	Ideal Brand Nemagon Liquid		091064	21	0370	2
00667	5-10-10 + 1.39 F-Nematocide		080973	21	0567	3
00868	6-12-12 + 1.39% F-Nematocide		080973	21	0567	3
06949	Ideal Golden 6-8-8 W-38 pds. 34.6% Nemagon Granular per ton.	Florida	010176	21	0176	3
06951	Ideal Golden 4-8-8 W-20 pds. 34.6% Nemagon Granular per ton.	Florida	010176	21	0176	3
06952	Ideal Golden 4-8-8 W-20 pds. 34.6% Nemagon Grandular per ton.	Florida	010176	21	0176	3
06953	Ideal Golden 4-8-8 W-12 lbs. 34.6% Nemagon Granular per ton.	Florida	010176	21	0176	3
06954	Ideal Golden 4-8-8 W-83 lbs. 34.6% Nemagon Grandular per ton.	Florida	010176	21	0176	3
06955	Ideal Cropmaster 4-8-8 W-100 lbs. 34.6% Nemagon Granular per ton.	Florida	010176	21	0176	3
	Number of products listed: 11.					
	(02459) 10/26/79					
002459	Stevens Ind. Inc., N. Main St. P.O. Box 272, Dawson GA 31742 9129952111.					
	Product name:					
00185	30% Nemagon Soil Fumigant		062972	21	0672	2
	Number of products listed: 1.					
	(02935) 10/26/79					
002935	Wilbur Ellis Co., 191 W. Shaw Avenue, Suite No. 107, Fresno, CA 93704 2092261811.					
	Product name:					
06643	Wil-Gro Plant Foods With 2.5% Nemagon Soil Fumigant.	California	010176	21	0176	3
	Number of products listed: 1.					
	(03051) 10/26/79					
003051	Agricultural Chemical Company, P.O. Drawer A, Mesquite, NM 88048 5052333171.					
	Product name:					
05946	AGCO Nemagon 8.6-G	N	040579	21	0176	3
	Number of products listed: 1.					
	(03122) 10/26/79					
003122	Superior Fertilizer and Chemical Company, Box 1021, Tampa, FL 33600 8132473431.					
	Product name:					
07571	Superior Nemagon EE-2	Florida	010176	21	0176	2
	Number of products listed: 1.					
	(03286) 10/26/79					
003286	The Staffel Co., P.O. Box 2380, San Antonio, TX 78298 5122275211.					
	Product name:					
06087	Staffel's Nema Nix Emulsion	Texas	010176	21	0176	3
08103	Staffel's Nema Soil Fumigant Granules	Texas	010176	21	0176	3
	Number of products listed: 2.					
	(03743) 10/26/79					
003743	Southern Agricultural Chemicals, Inc., P.O. Box 527, Kingstree, SC 29556 8033546111.					
	Product name:					
07018	Royal Brand 34.6% Nemagon Granule	South Carolina	010176	21	0176	2
	Number of products listed: 1.					

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
	(04887) 10/26/79					
004887	Stephenson Chemical Company, Inc., Box 87188, College Park, GA 30337 4047620194.					
	Product name:					
00117	30% Nemagon Granules		032166	21	0772	2
00119	10% Nemagon Granules		032166	21	0772	2
	Number of products listed: 2.					
	(05481) 10/26/79					
005481	Amvac Chemical Corp., 4100 East Washington Blvd., Los Angeles, CA 90023 2132543910.					
	Product name:					
00085	Durham Nematocide Solution 8.6		022673	21	1271	2
00086	Durham Nematocide EM 8.6		022673	21	1271	2
00087	Durham Nematocide Solution 4.3		022673	21	0272	2
00088	Durham Nematocide Solution 12.1		022673	21	1073	2
00092	Durham Nematocide EM 12.1		022673	21	0575	2
00093	Durham Nematocide EM 17.1		022673	21	0574	2
00094	Durham Nematocide EM 15.1		022673	21	0574	2
00104	Durham Nematocide Granules 50		022673	21	0673	2
00125	Durham Nematocide EM 8.6 for Aqua Ammonia		010675	21	0175	2
00148	Durham Nematocide EM 8.6 for 8-24-0 Fertilizer Solution.		010675	21	0175	2
07499	Durham Nematocide Solution 12.1	California	010176	21	0176	3
07500	Durham Nematocide EM 12.1	California	010176	21	0176	3
	Number of products listed: 12.					
	(05719) 10/26/79					
00005719	Chacon Chemical Corp., 2600 Yates Avenue, City of Commerce, CA 90040 2137215031.					
	Product name:					
04902	Cha-Kem-Co Soil Pest-O-Cide	California	010176	21	0176	2
	Number of products listed: 1.					
	(05905) 10/26/79					
005905	Helena Chemcial Co., Clark Tower Suite 3200, 5100 Poplar Ave., Memphis, TN 38137 9017610050.					
	Product name:					
00111	Helena Brand Nemagon S-1		112371	21	1171	1
00323	Nemagon EC-2		012174	21	1071	2
03015	Nemagon EC-2	Florida	010176	21	0176	2
07897	Nemagon EC-2	Florida	010176	21	0176	2
07953	Soil Fumigant 12.1 E.C.	Arizona	010176	21	0176	2
	Number of products listed: 5.					
	(06720) 10/26/79					
006720	Southern Mill Creek Products Company, Inc., Box 1096, Tampa, FL 33601 8136262111.					
	Product name:					
03410	SMCP Nemagon Soil Fumigant EC-2	Florida	010176	21	0176	2
03411	SMCP Granular DBCP Soil Fumigant	Florida	010176	21	0176	2
	Number of products listed: 2.					
	(06735) 10/26/79					
006735	Tide Products Inc., Attn: M. W. Marsh, Box 1020, Edinburg, TX 78539 5123834901.					
	Product name:					
00219	Nematide		022175	21	0275	2
	Number of products listed: 1.					
	(06973) 10/26/79					
006973	Soil Serve, Inc., P.O. Box 1817, Salinas, CA 93901 4084226473.					
	Product name:					
04411	Nemagon O 8.6 EC	California	010176	21	0176	2
04609	L	California	010176	21	0176	2
	Number of products listed: 2.					
	(07001) 10/26/79					
007001	Occidental Chemical Co., P.O. Box 198, Lathrop, CA 95330 2098582511.					
	Product name:					
00010	Best BBC12 for Control of Plant Parasitic Nematodes.		072164	21	0168	2

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
	(07001) 10/26/79—Continued					
00042	Best BBC 12-E Emulsifiable Liquid		080966	21	0773	2
07673	DBCP 25-E	California	010176	21	0176	2
07675	Best Carrot Special Nematocide	California	010176	21	0176	2
07681	DBCP 50-S	California	010176	21	0176	2
07692	Cotton Standard Nematocide	California	010176	21	0176	2
07717	DBCP 33-E	California	010176	21	0176	2
07722	Commercial Fertilizer with 4.4% Nematocide	California	010176	21	0176	3
07724	DBCP 25-S	California	010176	21	0176	2
07726	DBCP 50-LF	California	010176	21	0176	2
09792	DBCP 15-E	California	010176	21	0176	2
	Number of products listed: 11.					
	(07401) 10/26/79					
007401	Voluntary Purchasing Group, Inc., P.O. Box 460, Bonham, TX 75418 2145835501.					
	Product name:					
00177	Ferti-Lome Nematode Killer		020573	21	0273	2
	Number of products listed: 1.					
	(07478) 10/26/79					
007478	Chem-Pak Company, P.O. Box 757, So. Miami, FL 33143.					
	Product name:					
07977	Nemagon Soil Fumigant Granules	Florida	010176	21	0176	2
07978	Nemagon-70-Soil Fumigant	Florida	010176	21	0176	3
08029	Kleen Root-70-Soil Fumigant	Florida	010176	21	0176	3
	Number of products listed: 3.					
	(08127) 10/26/79					
008127	Aggie Chemical Industry, P.O. Box 8335, San Antonio, TX 78208 5122275109.					
	Product name:					
03912	Nema X Granules	Texas	010176	21	0176	3
03913	Nema X Liquid	Texas	010176	21	0176	3
	Number of products listed: 2.					
	(08343) 10/26/79					
008343	Gabriel Chemicals Ltd., P.G. Pratt Division, P.O. Box 2138, Paterson, NJ 07509 2016844797.					
	Product name:					
00066	Nemagon 18 G		083067	21	0668	3
	Number of products listed: 1.					
	(08590) 10/26/79					
008590	Agway, Inc., Chemical Division, Box 4933, Syracuse, NY 13221 3154776172.					
	Product name:					
00159	Agway Nemagon 10G		071655	21	0368	3
	Number of products listed: 1.					
	(09309) 10/26/79					
009309	Tilghman Wm. Company, Inc., P.O. Box 199, Salisbury, MD 21801.					
	Product name:					
00001	Tilghman's Fertilizer-Pesticide Mixture 5-10-10 With Nemagon.		082267	21	0368	3
	Number of products listed: 1.					
	(09404) 10/26/79					
009404	Chase & Company, Box 1697, Sanford, FL 32771 3053224552.					
	Product name:					
03481	Sunniland Nemagon File Symbol: 9404-PI	Florida	010176	21	0176	2
03482	Sunniland Nemagon Granules File Symb: 9404	Florida	010176	21	0176	2
	Number of products listed: 2.					
	(09779) 10/26/79					
009779	Riverside Chemical Company, Terra Southern Corporation, P.O. Box 171376/871 Ridgeway Loop Rd., Memphis, TN 38117 9017678810.					
	Product name:					
00078	Riverside Fumazone 4.3		021368	21	0473	2

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
		(09779) 10/26/79—Continued				
00079	Riverside Nemagon 4.3		021968	21	0473	2
00113	Riverside 30% Nemagon Granule		061968	21	0673	2
00154	Fumazone 30 Nematicide Granules		091972	21	0972	2
	Number of products listed: 4.					
		(09782) 10/26/79				
009872	Woodbury Chemical Company, P.O. Box 4319, Princeton, FL 33032 3052470524.					
	Product name:					
03605	Nemagon 121.1 E.C	Florida	010176	21	0176	2
	Number of products listed: 1.					
		(09859) 10/26/79				
009859	Landia Chemcial Company, P.O. Box 366, Lakeland, FL 33802 8136886878.					
	Product name:					
00056	Nemagon Granules 35		092076	21	0976	2
05634	Nemagon Granules 35	Florida	010176	21	0176	3
06212	Lanco 10% Nemagon Granules	Florida	010176	21	0176	2
08992	Nemagon 50 Soil Fumigant	Florida	051278	21	0176	3
08993	Nemagon 75 Soil Fumigant	Florida	051278	21	0176	3
	Number of products listed: 5.					
		(10163) 10/26/79				
010163	Gowan Company, P.O. Box 5696, Yuma, AZ 85364 6027838844.					
	Product name:					
00016	Prokil Nematocide EM 12.1		073170	21	0670	2
	Number of products listed: 1.					
		(10659) 10/26/79				
010659	Occidental Chemical Company, Box 1185, Houston, TX 77001 7138401265.					
	Product name:					
00006	OXY BBC 12-E Emulsifiable Liquid		092471	21	0773	2
00007	OCY BBC 12		042871	21	0673	2
06172	OXY BBC 12-E	Texas	010176	21	0176	3
	Number of products listed: 3.					
		(10993) 10/26/79				
010993	Corona Chemical Company, P.O. Box 784, Corona, CA 91720.					
	Product name:					
05224	Corona DBCP 70 E	California	010176	21	0176	2
	Number of products listed: 1.					
		(11049) 10/26/79				
011049	Hughes Spray Chemical Inc., P.O. Box 438, Lodi, CA 95240.					
	Product name:					
09853	Hughes Fumazone 43	California	010176	21	0176	2
	Number of products listed: 1.					
		(11169) 10/26/79				
011169	San Joaquin Sulphur Company, P.O. Box 127, Lodi, CA 95240 2093686676.					
	Product name:					
04604	Valor Brand Products Nemagon 4.3 E.C.	California	010176	21	0176	2
	Number of products listed: 1.					
		(11656) 10/26/79				
011656	Western Farm Service Inc., Shell Chemical Company, 1025 Connecticut Ave., suite 200, Washington, DC 20036 2022963633.					
	Product name:					
00023	Western Farm Service Nematox 8.6E Emulsifiable Soil Fumigant.		040375	21	0376	2
00024	Western Farm Service Nematox Solution 8.6 Soil Fumigant.		040375	21	0376	2

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
	(11656) 10/26/79—Continued					
00025	Western Farm Service Nematox Solution 4.3 Soil Fumigant.		060975	21	0675	2
05682	Nemagon 8.6 E	California	010176	21	0176	2
05683	Nemagon Solution 4.3	California	010176	21	0176	3
	Number of products listed: 5.					
	(14775) 10/26/79					
014755	Asgrow Florida Company, P.O. Drawer D, Plant City, FL 33566 8137521177.					
	Product name:					
00017	Nema-Kil 70E Soil Fumigant		062475	21	0675	2
10497	Nemagon 10% Granules		010176	21	0176	3
10541	Nemagon Granules 34.6%		010176	21	0176	2
	Number of products listed: 3.					
	(14815) 10/26/79					
014815	Soil Fumigants Company, P.O. Box 7801, Orlando, FL 32304.					
	Product name:					
05229	Nemagon 75	Florida	010176	21	0176	2
05230	Nemagon Granules (Fume Kill)	Florida	010176	21	0176	2
05231	Nemagon Granules '35'	Florida	010176	21	0176	2
05233	Nemagon 50	Florida	010176	21	0176	2
07415	Flaw Special Nemagon Granules	Florida	010176	21	0176	2
	Number of products listed: 5.					
	(15298) 10/26/79					
015298	Bromine Compounds Ltd., c/o Solcoor 415 Madison Ave., New York, NY 10017.					
	Product name:					
00001	Dibromo-Chloropropane DBCP		010473	21	0173	1
	Number of products listed: 1.					
	(15575) 10/26/79					
015575	Southland Agricultural Chemical Company, P.O. Box 6207, Montgomery, AL 36106.					
	Product name:					
05334	Nemagon 12.1 EC	Alabama	010176	21	0176	2
	Number of products listed: 1.					
	(21275) 10/26/79					
021275	Spaulding, Inc., 1921 5th Ave. S., St. Petersburg, FL 33733 8138962611.					
	Product name:					
04052	X-CEL Nemagon Granules	Florida	010176	21	0176	2
05486	X-CEL Nemagon Liquid	Florida	010176	21	0176	3
	Number of products listed: 2.					
	(35222) 10/26/79					
035222	Southern Chemicals, Inc., 204 N. Elm Ave., Box 1480, Sanford, FL 32771 3053225492.					
	Product name:					
07155	Nemagon L. F. Soil Fumigant	Florida	010176	21	0176	2
	Number of products listed: 1.					
	(37105) 10/26/79					
037105	Shore Fertilizer Co., 307 S. Evers Street, Plant City, FL 33566.					
	Product name:					
08455	Dry Mix Fertilizer W-Nemagon	Florida	010176	21	0176	3
08456	Dry Mix Bulk Fertilizer W-Nemagon	Florida	010176	21	0176	3
08457	Dry Mix Fertilizer Nemagon	Florida	010176	21	0176	3
	Number of products listed: 3.					

Product Search Listing—Product Label File of (011301) DBCP

Registrant	Name and address		AP date	PM	Date	Toxicity
	(37817) 10/26/79					
037817	Linden Agri. Serv., Inc., 17725 E. Highway 26, Box 507, Linden, CA 95236.					
	Product name:					
08418	L.A.S. Brand DBCP 8.6 EC Soil Fumigant	California	010176	21	0176	2
08420	L.A.S. Brand DBCP 4.3 EC Soil Fumigant	California	010176	21	0176	2
	Number of products listed: 2.					
	(37843) 10/26/79					
037843	University of Hawaii—Co-op. Extension Serv-Entomology Branch, Honolulu, HI 96822 8082354190.					
	Product name:					
08577	1,2-Dibromo-3-Chloropropane (DBCP)	Hawaii	010176	21	0176	3
08578	1,2-Dibromo-3-Chloropropane (DBCP)	Hawaii	010176	21	0176	3
08580	1,2-Dibromo-3-Chloropropane (DBCP)-EC	Hawaii	010176	21	0176	3
08585	1,2-Dibromo-3-Chloropropane	Hawaii	010176	21	0176	3
	Number of products listed: 4.					

[FR Doc. 79-34409 Filed 11-8-79; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1356-8; OPTS-80008]

Office of Pesticides and Toxic Substances; Availability of a Supplement to TSCA Chemical Substances Initial Inventory

AGENCY: Environmental Protection Agency (EPA or the Agency).

ACTION: Notice of Availability of a Supplement to the TSCA Chemical Substances Inventory.

SUMMARY: This notice announces that Supplement I to the TSCA Chemical Substances Inventory, compiled under the authority of section 8(b) of the Toxic Substances Control Act (TSCA), will be published on November 9, 1979. The Initial Inventory, published on June 1, 1979, listed 43,287 chemical substances that were manufactured in or imported into U.S. commerce since January 1975. This Supplement adds another 3,000 substances that were reported too late for inclusion in the Initial Inventory, or were inadequately defined during the first reporting period. EPA will distribute copies of this Supplement throughout the month of November, in advance of the official closing date (December 31, 1979) of the 210-day Revised Inventory reporting period. The Initial Inventory and its Supplement(s) will be major building blocks of an information base which EPA and other Federal agencies can use in assessing human health and environmental risks posed by chemical substances.

This notice explains how to obtain a copy of Supplement I to the Initial Inventory in printed form, microfiche, or computer-readable tape, and presents the Agency's policy with respect to Registry Number updates and its intention to publish a Revised Inventory in mid-1980.

FOR FURTHER INFORMATION CONTACT: Director, Industry Assistance Office, Office of Pesticides and Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; or call the toll-free number 800-424-9065. In Washington, D.C. please call 554-1404.

SUPPLEMENTARY INFORMATION: The inventory reporting regulations (40 CFR Part 710) were promulgated under the authority of section 8(a) of the TSCA (90 Stat. 2003; 15 U.S.C. 2601 *et seq.*). These regulations were published in the Federal Register on December 23, 1977 (42 FR 64572), and were supplemented on March 6, 1978 (43 FR 9254) and April 17, 1978 (43 FR 16178). These regulations implemented section 8(b) of TSCA, which requires EPA to compile, keep current, and publish a list of chemical substances manufactured, imported, or processed in the United States for a commercial purpose. This notice announces a Supplement to the Initial Inventory.

Section 710.6 of the Inventory Reporting Regulations established a two-phase reporting schedule designed to prevent duplicative reporting. During the initial reporting period, manufacturers and certain importers reported to EPA concerning chemical substances they manufactured or imported for a commercial purpose since January 1, 1975. Most chemical substances were reported by manufacturers and importers for the Inventory by the May 1, 1978 initial reporting deadline. Based on these reports, EPA published the Initial Inventory on June 1, 1979. The availability of the Initial Inventory was announced in the Federal Register on May 15, 1979, (44 FR 28558).

A second Inventory reporting period lasting 210 days began on the official publication date of the Initial Inventory. During this period, a person who processes or uses a chemical substance for a commercial purpose or imports a chemical substance as part of a mixture or article may report a chemical substance that was not included on the published Initial Inventory if the substance was manufactured, imported, or processed for a commercial purpose since January 1, 1975. Substances that are manufactured or imported (in bulk) for a commercial purpose after July 1, 1979 may not be reported for the Revised Inventory. As of that date, the manufacturer or bulk importer of such a substance is subject to the premanufacture notification requirements of section 5(a)(1)(A) of TSCA. These requirements apply to all persons who intend to manufacture or import (in bulk form) for a commercial purpose, a chemical substance not included in the Master Inventory File. Rules governing premanufacture notification were proposed in the Federal Register initially on January 10, 1979 (44 FR 2242), and reproposed on October 16, 1979 (44 FR 59765). The Agency developed an interim policy, published May 15, 1979 (44 FR 28564), to govern the submission and review of premanufacture notices until final rules are promulgated.

The premanufacture notification and revised Inventory reporting regulations apply to any eligible chemical substance not included in the Master Inventory File. The Initial Inventory and this Supplement are the published lists and contain most of the substances in the Master Inventory File. However, it should be re-emphasized that the published lists are *not* the complete inventory. The published lists will never be complete because substances are continually being added to the Master Inventory File. In addition, some substances which were reported, were inadequately identified for inclusion in the Initial Inventory; others were reported by Colour Index names (about which there is some ambiguity), some were reported as products of reactions involving trade name materials of unknown constituents, and some were reported with ambiguous confidentiality claims. All of these reported substances are in the Master Inventory File but cannot be listed in the published lists until the ambiguities or inadequacies are resolved.

Anyone who reported a chemical substance for the Initial Inventory that is not on either the published Initial Inventory or this Supplement may contact EPA to verify that the substance is included in the Master Inventory File. Chemicals reported for the revised Inventory have not yet been publised on the list. In addition, persons who may be subject to premanufacture notification requirements may also inquire whether a particular chemical substance is or is not on the Master Inventory File. Requests for such information should be directed to the Industry Assistance Office with complete, descriptive information about the substance in question. The Agency has provided guidance for identifying chemical substances on the published lists in the booklet "Reporting for the Chemical Substance Inventory", available from the Industry Assistance Office. Persons who are unable to locate on the published Inital Inventory and this Supplement a substance they process, or import as part of a mixture or article, should report the substance during the 210-day reporting period for the Revised Inventory which ends December 31, 1979.

Chemical substances whose identities are confidential for purposes of the Inventory are included on the Initial Inventory and this Supplement under the category "Chemical Substances with Confidential Identities." In accordance with the Inventory reporting regulations, EPA has published generic names for some of these substances in appendices to both the Initial Inventory and this Supplement. However, generic names for some substances have not yet been approved. The Agency is continuing to review these names, and has been in contact with the reporting companies. Since EPA knows the precise identities of these substances, the Agency can easily inform a requester whether a particular chemical substance is "new" or is already on the Inventory. EPA will

respond to such inquiries only after a person establishes a *bona fide* intent to manufacture a chemical substance for a commercial purpose, in accordance with § 710.7 of the Inventory Reporting Regulations. If the particular substance is included on the Inventory, premanufacture notification will not be required.

Supplement to Initial Inventory

I. *Content*

The June 1979 Initial Inventory listed 43,278 chemical substances produced in or imported into the United States commerce since January 1, 1975. This Supplement adds to the Initial Inventory another 3,000 substances that were reported too late for inclusion in the printed version, or were inadequately defined during the first reporting period. Supplements to the Inventory—almost by definition—are outdated as soon as they are published. Compilation of the next supplement begins on the day its predecessor is published.

Like the Initial Inventory, this Supplement lists, in Section A in ascending Chemical Abstracts Service (CAS) Registry Number order, the preferred names of chemical substances covered by this publication. A dagger symbol (†) denotes chemical substances that are more precisely defined in Appendix A: Chemical Substance Definitions. Appendix B: Confidential Chemical Substance Indentities lists generic (less specific) names for chemical substances that are included in the Supplement, but whose identities have been determined by EPA to be entitled to confidential treatment. These names were developed according to procedures specified in the EPA publication, "Guidelines for Creating Proposed Generic Names for Inventory." Each generic name actually describes a category of chemical substances. However, only the specific substance reported for the Inventory is included on the Inventory. Therefore, if a person wishes to determine whether a chemical substance he imports or manufactures, or intends to import or manufacture, is already included on the Inventory under a generic name, he should follow the procedures set forth in § 710.7 of the Inventory reporting regulations.

This Supplement also contains three other sections parallel to the volumes of the Initial Inventory. These are for use in conjunction with, but not as a substitute for, the chemical list in Section A. The Substance Name Index (Section B), the Molecular Formula Indices (Section C), and the UVCB (Chemical Substances of Unknown or Variable Composition, Complex Reaction Products, and Biological Materials) Index (Section D) provide alternate means of finding substances that are listed on the Inventory.

II. *Registry Number Updates*

A primary element for substance identification on the Inventory is the Chemical Abstracts Service (CAS) Registry Number. Certain CAS Registry Numbers represent very specific chemicals; others refer to substances whose composition cannot be represented by a definite chemical structure diagram, and for purposes of the Inventory have been defined as a UVCB, "Chemical Substance of Unknown or Variable Composition, Complex Reaction Products and Biological Materials." In the first group of substances, the chemical indentification associated with each CAS Registry Number is very specific but in the latter group redundancy can occur. Consequently, the definitions and CAS Registry Number assignments for all UVCB substances are continually under review, and changes are made when necessary to produce an internally consistent data base.

This Supplement includes a Registry Number Update section which gives replacement CAS Registry Numbers for substances that should be removed from the Initial Inventory, or were treated as single entities on the Initial Inventory but were subsequently found to have either different descriptions, or the same description but different CAS Registry Numbers. For example, there were listings for the CAS Registry Number 9005-81-6, cellophane; 61788-77-0, rayon: and 68442-85-3, regenerated cellulose. Since these substances are chemically identical, the first two numbers associated with cellophane and rayon have been replaced by the third CAS Registry Number. In another instance, the listing for a single CAS Registry Number 61789-82-0 was removed from the Inventory because it did not reflect a substance subject to the Inventory reporting regulations (40 CFR Part 710). All of these corrections shown in the Registry Number Update Section should be made on the Initial Inventory.

III. *Availability*

Due to the high cost of printing and distribution, EPA provides only one free copy of this Supplement in printed form to each company, corporation (or subsidiary, division or major department of a large corporation if they are located in different geographical areas), or to interested organizations while supplies last. EPA encourages persons to request microfiche copies wherever equipment permits, since these copies are less expensive to print and distribute. Companies that have already received a printed copy or microfiche copy of the Initial Inventory will automatically receive the Supplement in like form. Others who require copies of the Supplement, such as those who ordered the Inventory from the U.S. Government Printing Office, may obtain same by calling the Industry Assistance Office toll-free number listed above. Allow ten days for delivery.

EPA will place reference copies of this Supplement, in printed form or Microfiche (as equipment permits), in the libraries of most large cities, GPO regional depository libraries, State environmental offices, and EPA Regional Offices. The Industry Assistance Office can direct persons to the nearest location. Persons requiring minimal access to the Inventory are encouraged to use reference copies rather than ordering a complete copy of the Inventory from EPA.

The Supplement is also available on computer tape. The tape consists of two sections. The first section of the Supplement to the Initial Inventory lists each substance by CAS Registry Number, preferred name, and, where appropriate, molecular formula. The second section is an alphabetic listing of chemical synonyms of these substances. Only synonyms that were reported to EPA for the Inventory are included in this section, unlike the printed version which contains additional synonyms derived from CAS files. The tape does *not* include generic names for confidential substance identities nor the definitions prepared for certain substances, all of which appear in the appendices to the printed Inventory.

The computer readable version of the Inventory may be purchased through written request to:

National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

Information Disclosure From Inventory Reports

The published Initial Inventory and this Supplement identify only the reported substances. There is no reference on the printed Inventory either to the company that reported the substance, nor to the additional data about each substance which was required by the inventory reporting regulations. This information is in EPA's files, and can be made available to the public unless it is entitled to confidential treatment. The majority of the individual submissions contained no claims of confidentiality and will be disclosed upon written request. Such requests should be addressed to:

Ms. Gerri Greene, Freedom of Information Officer (A-101), Environmental Protection Agency, Room 1132, WSMW, 401 M Street, SW, Washington, DC 20460.

The elements of the set of data that exist in EPA's report records (both

computerized and hardcopy) about each chemical substance (with the exception of substances reported by persons who were not required to provide every item of information) are: the chemical name and CAS Registry Number of the substance; plant site(s) at which it was manufactured; for each plant site, how much of the substance was manufactured or imported in 1977 (reported by ranges); whether its manufacture was site limited; and whether it was manufactured or imported (activity). In addition, in cases in which a plant site was owned by a parent company, the name of the parent company (corporation) was usually reported.

(Sec. 8 of TSCA (90 Stat. 2003; (15 U.S.C. 2601 *et seq.*)).

Dated: November 6, 1979.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 79-34914 Filed 11-8-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 79-274, File No. BPH-10931; BC Docket No. 79-275, File No. BPH-11191]

Biard Communications Inc., and White River Valley FM Radio

In re applications of Biard Communications, Inc., Batesville, Arkansas. Req. 93.1 MHz, Channel No. 226, 100 kW (H&V), 560 ft. (BC Docket No. 79-274; File No. BPH-10931); White River Valley FM Radio, Batesville, Arkansas. Req. 93.1 MHz, Channel No. 226, 100 kW (H&V), 916 ft. (BC Docket No. 79-275; File No. BPH-11191); For construction permits; Memorandum opinion and order designating applications for consolidated hearings on stated issues.

Adopted: October 15, 1979.

Released: October 31, 1979.

1. The Commission by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above captioned mutually exclusive applications for a new FM broadcast station at Batesville, Arkansas.

2. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. The applicants are qualified to construct and operate as proposed. However, as the proposals are mutually exclusive they must be designated for hearing.

4. Accordingly, *it is ordered,* That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine in light of the evidence adduced pursuant to the foregoing issue which of the applications should be granted.

5. *It is further ordered,* That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

6. *It is further ordered,* That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

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

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[79-547]

Statement on Credit Rationing

Dated: November 1, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Board is responding to inquiries by member institutions regarding credit rationing when loan demand exceeds funds available by adopting a resolution intended to guide institutions in their evaluation of any method to fairly meet community loan demands.

EFFECTIVE DATE: November 1, 1979.

FOR FURTHER INFORMATION, PLEASE CONTACT: Sandra Y. Rosenblith, Director, Legal Division, Office of Community Investment, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Telephone number: (202-377-6217).

Federal Home Loan Bank Board Statement on Credit Rationing

During periods of economic stringency, savings and loans may find it necessary to ration funds available for lending. However, the use of some rationing techniques may inadvertently undermine the strong progress toward nondiscriminatory service to the entire community that the industry has accomplished to date.

The Board is committed to assisting the public and the industry through this difficult period. In this connection, and in response to numerous questions raised by industry trade organizations and individual savings and loans, the Board is today issuing this statement as guidance to the industry and its staff to clarify and amplify its position on the adoption of credit rationing techniques and the possibility that some of these techniques may be found to be discriminatory in effect.

A policy or practice is illegally discriminatory in effect when it has a demonstrably disproportionate negative impact on members of groups protected under the law and the policy or practices not a business necessity or not the least discriminatory means of achieving a necessary end. Discrimination in effect may be unintentional. It may also occur when past patterns of discrimination are perpetuated by a policy which appears on its face to have a neutral impact on all groups and areas.

Many techniques exist to ration credit. Among these are: raising interest rates; shortening maturities; lowering loan to value ratios; setting maximum loan amounts; restricting the types of credit available; tightening creditworthiness standards; and limiting loans to customers only or certain types of customers.

Applied evenhandedly, none of these techniques may seem discriminatory. However, under a specific set of facts and circumstances, each one might be. Therefore, the Board advises every institution rationing credit to make its own evaluation of whether a particular policy or policies will have a discriminatory effect. Such a determination appears especially appropriate when the rationing method is not directly related to the creditworthiness of the individual or the value of the security property or when it involves using underwriting standards which differ substantially from those

that the institution employs on a regular basis.

The Board does not believe that making such an evaluation need be complex or difficult. Each association can examine its business needs and the rationing alternatives which will meet its needs, then make a preliminary evaluation regarding the people and areas each alternative would affect and how that effect would be felt. In other words, knowing the level and type of lending prevalent in its community and the probable source of loan demand, the institution can compare the potential impact of alternative credit rationing techniques. Once this evaluation is made, the association can adopt the least discriminatory method which will meet its business needs.

Accordingly, to further ensure that both the consumer and the industry are protected and that regulatory burdens and costs as well as potential private liabilities are minimized, the Board strongly advises that any policies and techniques for credit rationing that an association adopts should be in writing and approved by the board of directors. Further, if the association finds that its policy will have a disproportionately negative impact of members of protected classes, then it should be able to support the fact that such a policy is necessary, economically sound and the least discriminatory alternative under the circumstances.

(Title VIII, Pub. L. 95-128, 91 Stat. 1147 (12 U.S.C. 2901); Title VII, Pub. L. 93-495 (15 U.S.C. 1691); Title VIII, Pub. L. 90-284, 82 Stat. 81 (42 U.S.C. 3601-3619), 16 Stat. 144, 14 Stat. 27 (42 U.S.C. 1981); EO 11063, 27 FR 11527; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 79-34709 Filed 11-8-79; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 103]

Frontier Freight Forwarders, Inc.; Order of Revocation

On November 2, 1979, Frontier Freight Forwarders, Inc., 2150 N.W. 70th Avenue, Miami, Florida 33166, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 103 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(c), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 103 issued to Frontier Freight Forwarders, Inc., be and is hereby revoked effective November 2, 1979, without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the Federal Register and served upon Frontier Freight Forwarders, Inc.

Robert G. Drew,

Director, Bureau of Certification and Licensing.

[FR Doc. 79-34637 Filed 11-8-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Arbitration Services Advisory Committee; Meeting

Notice is hereby given that the Federal Mediation and Conciliation Service Arbitration Services Advisory Committee, in accordance with Section 10 of the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463, 86 Stat. 770-776), will meet on Thursday, December 6 and Friday, December 7, 1979 at 9:00 a.m. in Conference Room 414, 2100 K Street, N.W., Washington, D.C.

The agenda is as follows:

1. Review of OAS fiscal year 1979.
2. Budget and staffing fiscal year 1980 and fiscal year 1981.
3. Update on roster admissions, review, retention and removal.
4. Report on arbitrator symposia and seminars.
5. Status report on arbitrator fiduciary responsibility under ERISA.
6. Review on procedural developments affecting OAS responsibilities.
7. Report on case processing procedures in light of projected escalation.
8. Developments in arbitration in the federal service.

This meeting shall be open to the public.

Communications regarding this meeting should be addressed to:

Ms. Jewell Myers, Administrator, Office of Arbitration Services, Federal Mediation and Conciliation Service, Washington, D.C. 20427,

Signed at Washington, D.C. this sixth day of November 1979.

Wayne L. Horvitz,

Director.

[FR Doc. 79-34613 Filed 11-08-79; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than November 29, 1979.

A. *Federal Reserve Bank of Boston,* 30 Pearl Street, Boston, Massachusetts 02106:

Industrial National Corporation, Providence, Rhode Island (financing and insurance activities; South Carolina, North Carolina): to engage, through its indirect subsidiary, Kensington Mortgage and Finance Corporation, in origination and sale of loans for the purchase of mobile homes; servicing of

mobile home loans; and acting as agent for the sale of property and casualty insurance sold in connection with extensions of credit. These activities would be conducted from a new office in Spartanburg, South Carolina serving South Carolina and 19 contiguous counties in the southwest portion of North Carolina. Comments on this application must be received by November 27, 1979.

B. *Federal Reserve Bank of Philadelphia,* 100 North 6th Street, Philadelphia, Pennsylvania 19105:

New Jersey National Corporation, Trenton, New Jersey (mortgage banking activities; Delaware, Maryland, New Jersey, and Pennsylvania): to engage, through its subsidiary, Underwood Mortgage and Title Company, in making, acquiring, selling, and servicing loans and other extensions of credit secured by real estate mortgages. These activities would be conducted from an office in Wilmington, Delaware, serving the four states listed in the caption to this notice.

C. *Federal Reserve Bank of San Francisco,* 400 Sansome Street, San Francisco, California 94120:

Bankamerica Corporation, San Francisco, California (lending, loan servicing and credit-related insurance activities; Utah): to engage, through its indirect subsidiary, FinanceAmerica Corporation, in making, acquiring, and servicing loans and other extensions of credit, including consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, and making loans secured by real and personal property; and the offering of credit related life, credit related accident and disability insurance and credit related property insurance in connection with extensions of credit made or acquired by FinanceAmerica Corporation. These activities would be conducted from an office in Orem, Utah, serving the State of Utah.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 31, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-34663 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks of Florida, Inc.; Proposed Expansion of Verifications, Inc.

Barnett Banks of Florida, Inc., Jacksonville, Florida, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 USC § 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to expand its wholly-owned subsidiary, Verifications, Inc., Jacksonville, Florida.

Applicant states that the proposed subsidiary would perform the following activities: Applicant proposes to engage, through Verifications, in the personal check verification business throughout the State of Alabama. Verifications will authorize subscribing merchants to accept certain personal checks tendered by customers in payment of goods and services. If a properly authorized check is subsequently dishonored, Verifications will be obligated to purchase the check from the merchant at face value. In return for this service, subscribing merchants will pay a monthly fee to Verifications. These activities would be performed from new offices of Applicant's subsidiary in Mobile and Birmingham, Alabama, and the geographic area to be served is the State of Alabama. Such activities have been found by the Board to be permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 5, 1979.

Board of Governors of the Federal Reserve System, November 5, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-34664 Filed 11-08-79; 8:45 am]

BILLING CODE 6210-01-M

First Kiowa Bancshares, Inc.; Formation of Bank Holding Company

First Kiowa Bancshares, Inc., Kiowa, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 98.5 percent of the voting shares of The First State Bank, Kiowa, Kansas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 3, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-34659 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

First Tahlequah Corp.; Formation of Bank Holding Company

First Tahlequah Corp., Tahlequah, Oklahoma, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares less directors' qualifying shares of First National Bank, Tahlequah, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

First Tahlequah Corp., Tahlequah, Oklahoma, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire voting shares of

First Tahlequah Business Trust and indirectly First Tahlequah Insurance Agency, Inc., Tahlequah, Oklahoma.

Applicant states that the proposed subsidiary would perform the activities of credit life and accident and health insurance in connection with extensions of credit made by First National Bank, Tahlequah, Oklahoma. These activities would be performed from offices of Applicant's subsidiary in Tahlequah, Oklahoma, and the geographic areas to be served are Cherokee County, Oklahoma. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 29, 1979.

Board of Governors of the Federal Reserve System, November 1, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-34662 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

J. J. Flynn Investment Co.; Acquisition of Bank

J. J. Flynn Investment Co., Parsons, Kansas, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire up to 5.6 percent of the voting shares of The State Bank of Parsons, Parsons, Kansas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 29, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 31, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-34661 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

Nichols Hills Bancorporation, Inc.; Formation of Bank Holding Company

Nichols Hills Bancorporation, Inc., Oklahoma City, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Nichols Hills Bank, Oklahoma City, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 3, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 2, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-34660 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

The Marine Corporation; Acquisition of Bank

The Marine Corporation, Milwaukee, Wisconsin, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 per cent (less directors' qualifying shares) of the voting shares of the successor by merger to First Bank and Trust Company of Racine, N.A., Racine, Wisconsin. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 3, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1979.

William N. McDonough

Assistant Secretary of the Board.

[FR Doc 79-34666 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

U.S. Bancorp; Proposed Acquisition of State Finance and Thrift Company, Inc.

U. S. Bancorp, Portland, Oregon, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 USC § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire voting shares of State Finance and Thrift Company, Inc., Logan, Utah.

Applicant states that the proposed subsidiary would operate as an industrial loan corporation engaging in the activities of making consumer finance loans, issuing thrift certificates and thrift passbook certificates, and writing credit life and disability insurance directly related to the loans it makes. These activities would be performed from offices of Applicant's subsidiary in Logan, Utah, and the geographic areas to be served are Cache County, Utah. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater

convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 3, 1979

Board of Governors of the Federal Reserve System, October 31, 1979.

William N. McDonough

Assistant Secretary of the Board.

[FR Doc. 79-34665 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

Watonga Bancshares, Inc.; Formation of Bank Holding Company

Watonga Bancshares, Inc., Watonga, Oklahoma, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Watonga State Bank, Watonga, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 3, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1979.

William N. McDonough,

Assistant Secretary of the Board.

[FR Doc. 79-34658 Filed 11-8-79; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Preemptive Effect of Magnuson-Moss Act on State Law

AGENCY: Federal Trade Commission.

ACTION: Notice of extension of time for written comments on Commission's interpretation of Section 111 of the Act.

SUMMARY: On September 6, 1979, the Commission published a request in the Federal Register [44 FR 52036] calling for written comments concerning the Commission's interpretations of Section 111 and the effect of the Warranty Act on State law. Following publication of that request, the Commission received several additional requests that the period for written comment be extended, and several requests that a rebuttal period be established. In response to those requests and because of the important nature of the proceeding, the Commission has determined to extend the time for written comment for an additional 60 days. The Commission has delegated to the Director of the Bureau of Consumer Protection authority in this proceeding over the establishment of a reasonable rebuttal period. Although no further extension of the comment period is contemplated, the Commission has also delegated to the Director of the Bureau of Consumer Protection authority in this proceeding over deadlines for comment.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Rachael Miller, Attorney, (202) 523-0425, or Miriam Silverman, Attorney, (202) 523-1753, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

DATES: Written comments must now be received by January 4, 1980.

By direction of the Commission, dated November 2, 1979.

Carol M. Thomas,

Secretary.

[FR Doc. 79-34723 Filed 11-8-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

College Library Resources Program

AGENCY: Office of Education, HEW.

ACTION: Notice of Closing Date for Transmittal of Applications for Basic Grants.

Applications are invited for Basic Grants under the College Library Resources Program.

Authority for this program is contained in sections 201-208 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1021-1028)

This program issues awards to institutions of higher education (applying on their own behalf or on behalf of branches), combinations of these institutions, new institutions of higher education (as defined in 45 CFR Part 131.2), and other public and private nonprofit library agencies whose primary function is to provide library and information services to institutions of higher education on a formal cooperative basis.

The purpose of the awards is to assist institutions of higher education in the acquisition of library materials.

Closing Date For Transmittal of Applications: an application for a grant must be mailed or hand delivered by December 21, 1979.

Applications Delivered By Mail: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.406, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Commissioner of Education.

If an application is sent through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Applications for individual branch campuses should be sent in separate envelopes and not combined.

Each late applicant will be notified that its application will not be considered.

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, S.W., Washington, D.C. 20202.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: In light of the number of basic grant applications expected, it is anticipated that funds will not be available in fiscal year 1980 for supplemental and special purpose grants, which are also specified in 45 CFR Part 131. Basic grant requests may not exceed $5,000. To be considered for a basic grant, applicant institutions must be certified as eligible by the Office of Education's Division of Eligibility and Agency Evaluation and must meet the maintenance-of-effort requirements for both library materials and total library purposes, as set forth in 45 CFR Part 131.

Available Funds: It is expected that approximately $4,987,500 will be available for the College Library Resources Program in fiscal year 1980.

Due to the limited amount of anticipated funds, it is expected that approximately 2,600 awards will be made in the basic grant category only.

The anticipated award for the basic grant will be approximately $2,000. All of these will be new awards; no funds are reserved for continuation awards. Grants will be awarded to support activities to be carried out in fiscal year 1981 (October 1, 1980 to September 30, 1981).

However, these estimates do not bind the U.S. Office of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by November 9, 1979.

Applications will be mailed to all fiscal year 79 applicants.

Applications may also be obtained by writing to the Library Education and Postsecondary Resources Branch, Attn. II-A, U.S. Office of Education (Room 3622, Regional Office Building 3), 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 package. The Commissioner strongly urges that the narrative portion of the application does not exceed two pages in length. The Commissioner further urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the College Library Resources Program (45 CFR Part 131); and

(b) General Provisions Regulations for the Office of Education Programs (45 CFR Parts 100 and 100a).

Note: The proposed Education Division General Administrative Regulations (EDGAR) were published in the Federal Register on May 4, 1979 (44 FR 26298). When EDGAR becomes effective, it will supersede the General Provisions Regulations for Office of Education Programs.

If EDGAR takes effect before grants are made under this program, those grants will be subject to the following provisions of EDGAR: Subpart A (General); Subpart E (What Conditions Must Be Meet by a Grantee?); Subpart F (What Are the Administrative Responsibilities of a Grantee?); and Subpart G (What Procedures Does the Education Division Use to Get Compliance?).

Further Information: For further information contact Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Resources, U.S. Office of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202, telephone: (202) 245-9530.

(20 U.S.C. 1020-1028)

(Catalog of Federal Domestic Assistance No. 13.406, College Library Resources Program)

Dated: November 5, 1979.

John E. Ellis,

Executive Deputy Commissioner for Educational Programs.

[FR Doc. 79-34641 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-02-M

Metric Education Program

AGENCY: Office of Education, HEW.

ACTION: Extension of Closing Date and Submission of Applications for Fiscal Year 1980.

SUMMARY: The November 14, 1979 closing date for the submission of applications under the Metric Education Program is extended. The *new closing date is February 14, 1980.*

SUPPLEMENTARY INFORMATION: Authority for this program is contained in section 311 of Title III of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561.

(20 U.S.C. 2951-2954)

This program issues grant awards to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), public and private nonprofit agencies or organizations (NPOs), and any two combinations of the above eligible applicants.

The purpose of the awards is to encourage and support projects that prepare students to use the metric system of measurement (International System of Units (SI)).

Applications Delivered By Mail: An application sent by mail should be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.561, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial careier.

(4) Any other proof of mailing acceptable to the U.S. Commissioner of Education.

If an application is sent through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

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 & D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Preapplications: Preapplications will not be required for fiscal year 1980 funding consideration.

Program Information: Based on their project design(s), each applicant shall submit an abstract based on the abstract information included in Part IV, Program Narrative. The abstract will be developed using the pre-printed pages contained in the application package (pages I 10–12). Each proposal shall include a table of contents and the proposal shall be sequentially numbered throughout.

Categories of typical activities that are supported by the Program are specifically set forth in Subpart B, § 161b.10 of the regulations.

All awards are for a 12-month period and will be new; no funds are reserved for continuation awards.

Available Funds: It is expected that approximately $1,840,000 will be available for the Metric Education Program in fiscal year 1980.

It is estimated that these funds could support 46–50 new projects in addition to contract obligations.

Higher operational costs are involved in projects whose activities are state-wide or multi-state in scope, projects that include or are basically designed to implement mobile metric laboratories, projects whose activites are to be carried out by a group of eligible parties including a consortium and cooperative arrangements, and projects whose activities are to be carried out by a group of eligible parties including a consortium and cooperative arrangements, and projects whose activities are national in scope. Because of these higher costs these projects will be funded at a level which will generally exceed amounts of grants for activities for single school districts or single institutions.

The amount of an award is determined by the nature of the project design, the allowability of activities included in the design, and the amount of funds available to the program to suport such projects. However, former projects that have included state-wide or multi-state activites have generally been funded in the range of $35,000–$40,000. Projects that have been structured around activities which were implemented under the aegis of a group of eligible agencies have been funded in the range of $50,000–$75,000. Grant awards to support projects that include metric educational activities to single agencies or institutions which have not pursued activites comparable in scope to the aforementioned projects have generally been funded in the range of $25,000–$35,000. Requests for funds to support projects which are centered around the operation of mobile metric education laboratories have been in the range of $50,000–$80,000.

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 currently available. Agency representatives may obtain an application by writing to the Metric Education Program, U.S. Office of Education (1832 M Street, N.W., Suite 835), 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 Metric Education Program information package. The Commissioner strongly urges that the narrative portion of the application not exceed 50 pages in length. The Commissioner further urges that applicants not submit information that is not requested. Compliance with this suggestion should enhance the efficiency and objectivity of the analysis and evaluation of the applications.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Metric Education Program (45 CFR Part § 161b).

These regulations were published as a notice of proposed rulemaking in the Federal Register on May 25, 1979 (44 FR 30636). Applicants should base their applications on the notice of proposed rulemaking. When they are published as final regulations and become effective, these regulations will govern applications and grants under this program.

(b) The Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

EDGAR was published in proposed form in the Federal Register on May 4, 1979 (44 CFR 26298). When EDGAR is published as final regulations, it will supersede the General Provisions Regulations for Office of Education Programs (the current 45 CFR Parts 100a through 100d).

When it becomes effective, EDGAR will govern applications and grants under this program.

Application Specifications: You must forward one original and two copies of the application to the Application Control Center of the U.S. Office of Education.

Further Information: For further information, contact Dr. Floyd A. Davis, Program Manager, Metric Education Program, BSI, U.S. Office of Education (1832 M. Street, N.W., Suite 835), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 653–5920.

(20 U.S.C. 2951–2954)

(Catalog of Federal Domestic Assistance Number 13.561, Metric Education Program)

Dated: November 5, 1979.

John Ellis,

Executive Deputy Commissioner for Educational Programs.

[FR Doc. 79-34640 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-02-M

National Advisory Committee on Black Higher Education and Black Colleges and Universities; Meeting

AGENCY: National Advisory Committee on Black Higher Education and Black Colleges and Universities.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of the twelfth meeting of the National Advisory Committee on Black Higher Education and Black Colleges and Universities. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1). This document is intended to notify the general public of their opportunity to attend.

DATE: December 16–18, 1979, 9:00 am to 5:00 pm.

ADDRESS: The Washington Hilton, 1919 Connecticut Avenue NW., Washington, D.C. 20009.

FOR FURTHER INFORMATION CONTACT: Ms. Carol J. Smith, Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities, Suite 706, 1100 17th Street NW., Washington, D.C. 20036, AC 202 653–7558.

The National Advisory Committee on Black Higher Education and Black Colleges and Universities is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90–247 as amended; 20 U.S.C. 1233 *et seq.*) and the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 1) which set forth standards for the

formation and use of advisory committees.

The Committee is directed to advise the Secretary of Health, Education, and Welfare, the Assistant Secretary for Education, and the Commissioner of Education. The Committee shall examine all approaches to higher education of Black Americans as well as the needs of historically Black colleges and universities.

The meeting on December 16–18, 1979, will be open to the public beginning at 9:00 am each day. The meeting will be held at The Washington Hilton Hotel, 1919 Connecticut Avenue, NW., Washington, D.C. 20009.

Sunday, December 16, 1979, will be a working session for the Committee members to review reports prepared by Staff. Monday and Tuesday, December 17 and 18, will be devoted to formulations of final recommendations and the 25-Year Plan to enhance opportunities for Blacks in higher education.

Records shall be kept of all Committee proceedings and shall be available for public inspection at the Office of the National Advisory Committee on Black Higher Education and Black Colleges and Universities located at 1100 17th Street NW., Suite 706, Washington, D.C. 20035.

Signed at Washington, D.C. on November 1, 1979.

Carol J. Smith,

Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities.

[FR Doc. 79-34669 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-02-M

Food and Drug Administration

[Docket No. 79N-0324; DESI 6514]

Warner-Lambert/Parke-Davis; Benylin Cough Syrup; Opportunity for Hearing on Proposal to Withdraw Approval of New Drug Application

Correction

In FR Doc. 79-30851, appearing on page 57497, in the issue for Friday, October 5, 1979, make the following correction.

On page 57500, in the center column, the second full paragraph, the third line should have read: "52 Stat. 1052–1053 as amended (21 U.S.C.".

BILLING CODE 1505-01-M

[Docket No. 77D-0430]

Pneumococcal Vaccine, Polyvalent; Availability of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of a revised guideline for laboratory test procedures and lot release requirements for Pneumococcal Vaccine, Polyvalent. This guideline replaces a previously issued guideline for this biological drug product.

ADDRESS: Requests for a copy of the guideline and submission of 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: Iris Hyman, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 31, 1978 (43 FR 4115), FDA announced the availability of a guideline for laboratory test procedures and lot release requirements for Pneumococcal Vaccine, Polyvalent. The vaccine is used for immunization of humans against diseases caused by Streptococcus pneumoniae (pneumococci). Since publication of the January 31, 1978 notice, there have been advances in the manufacturing and testing procedures for the components of the vaccine and the final product.

As a result of these advances in manufacturing and technology, a revised guidelines has been prepared to replace the 1978 guideline. The revised guideline was discussed at a public meeting held at the Bureau of Biologics on May 4, 1979. This meeting was announced to the public in the Federal Register of April 10, 1979 (44 FR 21367). A copy of the transcript of the May 4, 1979 meeting and a copy of the revised guideline are available for public review between 9 a.m. and 4 p.m., Monday through Friday, in the office of the Hearing Clerk (HFA-305), Food and Drug Administration (address above). Interested persons may obtain a single copy of the guideline by contacting the office of the Hearing Clerk and identifying the document with the Hearing Clerk docket number found in brackets in the heading of this document.

Interested persons may submit written comments on the guideline to the Hearing Clerk (preferably in four copies, identified with the Hearing Clerk docket number found in brackets in the heading of this document). Such comments will be considered in determining whether amendments or revisions to the guideline are warranted. Received comments will be incorporated into the public file on the guideline and may be seen in the above-named office between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Dated: November 1, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-34227 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79G-0382]

Talbot-Carlson, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Talbot-Carlson, Inc., has filed a petition proposing affirmation that ethyl alcohol containing 4.25 percent ethyl acetate be generally recognized as safe (GRAS) as used in a liquid feed supplement for ruminants.

DATE: Comments by January 8, 1979.

ADDRESS: 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: Robert P. Schmidt, Bureau of Veterinary Medicine (HFV-224), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3390.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1786 as amended (21 U.S.C. 321(s), 348, 371(a))) and the regulations for affirmation of GRAS status (§ 570.35 (21 CFR 570.35)), notice is given that a petition (GRASP FAP 2179) has been filed by Talbot-Carlson, Inc., 207 Scott St., Audubon, IA 50025, proposing that ethyl alcohol containing 4.25 percent ethyl acetate be affirmed as GRAS for use in a liquid feed supplement for use on ruminant feeds. The petition has been placed on public display at the office of the Hearing Clerk (HFA-305), Food and Drug Administration.

Any petition that meets the format requirements outlined in § 570.35 is accepted for filing by the Food and Drug Administration. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before January 8, 1979, review the petition and/or file comments, preferably four copies,

with the Hearing Clerk (HFA-305), Food and Drug Administration, address above. Comments should be identified with the Hearing Clerk docket number found in brackets in the heading of this document and should include any available information helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk from 9 a.m. to 4 p.m, Monday through Friday.

Dated: November 1, 1979.

Terence Harvey,

Acting Director, Bureau Veterinary Medicine.

[FR Doc. 79-34480 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79F-0323]

USDA Northern Regional Research Center; Filing of Petition for Food Additive

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The U.S. Department of Agriculture, Northern Regional Research Center, Peoria, IL, has filed a food additive petition proposing that the regulations be amended to provide for the safe use of crambe meal in feedlot cattle rations.

FOR FURTHER INFORMATION CONTACT: William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 [21 U.S.C. 348(b)(5)]), notice is given that a food additive petition (FAP 2176) has been filed by the U.S. Department of Agriculture, Northern Regional Research Center, 1815 N. University St., Peoria, IL 61604, proposing that Part 573—Food Additives Permitted in Feed and Drinking Water of Animals (21 CFR Part 573) be amended to provide for the safe use of crambe meal in the feed of feedlot cattle as a source of protein when used in an amount not to exceed 4.2 percent of the total ration or one-third of the supplemental protein.

The agency is reviewing a request that the requirement for an environmental impact analysis report for this action be waived and that no environmental impact statement be required as under § 25.1(f)(1)(v) (21 CFR 25.1(f)(1)(v)).

Dated: November 1, 1979.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-34479 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-03-M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare (38 FR 18571, July 12, 1973, as amended most recently at 44 FR 23125, April 18, 1979) is amended to reflect the following changes in the Office of Planning and Evaluation, Office of the Assistant Secretary for Health: (1) The abolishment of the Division of Policy Development and Program Review; (2) the establishment of a Division of Evaluation, Legislation, and Planning; a Division of Health Research and Prevention; and a Division of Health Resources and Services; and (3) the transfer of the Division of Statistical Policy to the Office of Health Research, Statistics and Technology.

Section HA-20 Functions is amended as follows:

(1) Delete the functional statement for the *Office of Planning and Evaluation (HA9)* and substitute the following:

Office of Planning and Evaluation (HA9). The Deputy Assistant Secretary for Health Planning and Evaluation: (1) Serves as the principal advisor to ASH/SG concerning the development of national health policy, planning and legislation and the conduct of evaluations and as Special Assistant to the Secretary for National Health Insurance; (2) represents PHS in the above areas within the Department and recommends new approaches and initiatives as required; (3) requests, directs or conducts PHS health policy analysis and evaluation, including selected research projects; (4) directs PHS participation in the Department's planning efforts and serves as liaison with all components of PHS and other related organizations on these matters; (5) analyzes developments outside PHS which may influence health policies; (6) directs and coordinates the efforts of PHS components in legislative development, planning, evaluation, and policy analysis in areas like health care delivery, health statistics, health research, health technology assessment and transfer, and health prevention and protection and provides analytical assistance relative to these efforts; (7) directs the PHS review of plans and strategies for resource development; (8) cooperates and coordinates with the health-related activities of the Assistant Secretary for Planning and Evaluation, OS, and the Health Care Financing Administration (HCFA); (9) coordinates and directs PHS and DHEW activities related to National health Insurance; and (10) coordinates with the Division of Policy Planning, Office of Health Research, Statistics and Technology relative to analysis of economic issues impacting national health policies and plans.

(2) Delete the functional statement for the *Division of Policy Development and Program Review (HA9-1)* in its entirety.

(3) Change the code designation of the *Division of Statistical Policy from (HA9-2) to (HAT-7)*, remove the *Division of Statistical Policy (HAT-7)* in its entirety and place after the *Office of Program Support (HAT-6)* in the Office of Health Research, Statistics and Technology (HAT).

(4) After the statement for the *Office of Planning and Evaluation (HA9)*, insert the following statements:

Division of Evaluation, Legislation, and Planning (HA9-3). The Division: (1) Coordinates the review of planning issues analyses and the preparation of planning recommendations to ASH/SG; (2) works closely with the Office of Management concerning PHS activities, icluding submission of the PHS annual budget; (3) identifies policy research questions and with other Office of Planning and Evaluation (OPE) divisions, the Office of Health Research, Statistics and Technology, and the PHS agencies, sets priorities for such research and assures that such policy research is undertaken, either by the PHS agencies or this division; (4) arranges for consultation to the PHS agencies on evaluation methodology and design; (5) contracts for policy research as needed; (6) in cooperation with other OPE divisions, PHS staff offices, PHS agencies, and the Office of the Assistant Secretary for Planning and Evaluation, OS, sets priorities for evaluation of programs; (7) coordinates the review and approval of evaluation plans; (8) conducts or contracts for program evaluation and monitors evaluation programs and assesses the results; (9) coordinates PHS responses to GAO reports and serves as liaison with GAO on studies of general concern to PHS; and (10) coordinates development of legislative planning for PHS.

Division of Health Research and Prevention (HA9-4). The Division: (1) Initiates and conducts policy analyses in relevant issue areas including biomedical research, environmental factors in health, disease prevention, technology assessment and transfer; (2) represents PHS and ASH/SG on health policy analyses and development activities within the Department; (3) analyzes the relevancy of current policies on health programs and recommends new approaches and analyzes developments outside PHS which may influence health policies and programs; (4) reviews proposed regulations and guidelines for consistency with ASH/SG policy; (5) provides analytical assistance in legislative analyses, planning, evaluation, and policy research; (6) develops planning

issues for analysis by OPE and other PHS components; (7) reviews legislation for consistency with PHS policy; (8) serves as policy liaison with all components of PHS and other health-related organizations; and (9) coordinates interagency efforts affecting the Division's areas of program responsibility.

Division of Health Resources and Services (HA9-5). The Division: (1) Initiates and conducts policy analyses in relevant issue areas including the development of health resources and the planning and delivery of health care services; (2) represents PHS and ASH/SG on health policy analyses and development activities within the Department; (3) analyzes the relevancy of current policies on health programs and recommends new approaches and analyzes development outside PHS which may influence health policies and programs; (4) reviews proposed regulations and guidelines for consistency with ASH/SG policy; (5) provides analytical assistance in legislative and budget analyses, planning, evaluation, and policy research; (6) develops planning issues for analysis by OPE and other PHS components; (7) reviews legislation for consistency with PHS policy; (8) serves as policy liaison with all components of PHS and other health-related organizations; and (9) coordinates interagency efforts affecting the Divisions's areas of program responsibility.

Date: November 1, 1979.

Particia Roberts Harris,

Secretary.

[FR Doc. 79-34818 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-85-M

Office of the Secretary

Protection of Human Subjects; HEW Support of Human in Vitro Fertilization and Embryo Transfer; Report of the Ethics Advisory Board

AGENCY: Department of Health, Education, and Welfare.

ACTION: Reopening of Comment Period and Correction to Previously Published Document.

SUMMARY: The Department of Health, Education, and Welfare (HEW) is reopening the comment period on the report of the HEW Ethics Advisory Board on HEW Support of Human *In Vitro* Fertilization and Embryo Transfer. That report was published in the Federal Register on June 18, 1979 (44 FR 35033). The Department has learned that the appendix volumes containing the reports and studies of the expert witnesses were not available to the public from the Government Printing Office (GPO) until after the comment period closed (August 17, 1979). Since those volumes are now available and in order to allow interested parties to avail themselves of that information before commenting on the Report and Recommendations of the Ethics Advisory Board, the Department is reopening the comment period until (January 8, 1979). It should be noted, however, that all of the comments received thus far are still on file and will be reviewed and considered along with any new or amended comments. The appendix volumes may be ordered from the GPO by stock number 017-040-00454-1. In addition, errors in the June 18, 1979, publication are corrected in the text below.

DATES: Written comments concerning the Report and Recommendations of the Ethics Advisory Board should be received on or before (January 8, 1979) if they are to be given full consideration. Comments which have already been submitted should not be re-submitted.

ADDRESS: Please send comments or requests for additional information to:

F. William Dommel, Jr., J.D., Assistant Director for Regulations, Office for Protection from Research Risks, National Institutes of Health, 5333 Westbard Avenue, Room 3A-18, Bethesda, Maryland 20205, Telephone: (301) 496-7163.

Where all comments received will be available for inspection weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m.

ERRATA NOTICE: The following errors in the June 18, 1979, publication of HEW Support of Human *In Vitro* Fertilization and Embryo Transfer: Report of the Ethics Advisory Board should be noted.

Dated: September 17, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 22, 1979.

Patricia Roberts Harris,

Secretary.

ERRATA: Corrections to the HEW Support of Human In Vitro Fertilization and Embryo Transfer: Report of the Ethics Advisory Board, which was published in the June 18, 1979 Federal Register (30 FR 35033).

1. On page 35034, first column, under Preface, line 12, change "forward" to "forwarded".
2. On page 35034, second column, under Chapter I, A., second paragaph, line 9, change "fertilizaiton" to "fertilization".
3. On page 35034, second column, under Chapter I, A., third paragraph, line 17, change "eights" to "eight".
4. On page 35034, third column, under Chapter I, B., first paragraph, line 9, change "artifical" to "artificial".
5. On page 35034, third column, under Chapter I, B., second paragraph, line 4, change "brining" to "bringing".
6. On page 35036, first column under Chapter I, B., 3., line 3, change "concentratred" to "concentrated".
7. On page 35036, second column, under Chapter I, B., 3., fifth paragraph, line 4, change *"in vitro"* to *"in vivo"*.
8. On page 35036, third column, under Chapter I, B., 3., sixth paragraph, line 7, change "resistent" to "resistant".
9. On page 35036, third column, under Chapter I, C., first paragraph, line 12, change "attemps" to "attempts".
10. On page 35037, first column, under Chapter I, D., change heading from "Evoluation" to "Evolution".
11. On page 35037, third column, under Chapter I, D., fifth paragraph, line 1, change "Hew" to "HEW".
12. On page 35039, second column, under Chapter II, A., line 13, change "hyatidiform" to "hydatidiform".
13. On page 35039, third column, under Chapter II, A., fifth paragraph, line 3, change "assessement" to "assessment".
14. On page 35040, second column, under Chapter II, D., second paragraph, line 1, change "distinquishable" to "distinguishable".
15. On page 35041, first column, under Chapter II, D., eighth paragraph, line 15, change "fo" to "of".
16. On page 35044, first column, under Chapter III, B., fifteenth paragraph, line 19, change "than" to "then".
17. On page 35045, third column, under Chapter III, F., third paragraph, line 5, change "embroyo" to "embryo".
18. On page 35045, third column, under Chapter III, F., third paragraph, lines 7 and 9, change "embroyos" to "embryos".
19. On page 35045, third column, under Chapter III, F., third paragraph, lines 11 and 20, change "embroyo" to "embryo".
20. On page 35045, third column, under Chapter III, G., first paragraph, line 11, change "embroyos" to "embryo".
21. On page 35045, third column, under Chapter III, G., first paragraph, line 15, change "should devoted" to "should be devoted".
22. On page 35046, first column, under Chapter III, G., seventh paragraph, line 7, change "veneral" to "venereal".
23. On page 35047, second column, under Chapter IV, first paragraph, line 5, change "colleaques" to "colleagues".
24. On page 35048, first column, under Chapter IV, A., 2., fourth paragraph, line 12, change "however" to "However".
25. On page 35048, third column, under Chapter IV, B., 2., fifth paragraph, line 4, change "sorrogate" to "surrogate".
26. On page 35049, first column, under Chapter IV, B., 2., seventh paragraph, line 10, change "This" to "There".
27. On page 35049, first column, under Chapter IV, B., 2., seventh paragraph, line 12, change "constitutionaly permissable" to "constitutionally permissible".
28. On page 35049, first column, under Chapter IV, B., 2., eighth paragraph, line 5, change "is" to "has".
29. On page 35049, second column, under Chapter IV, B., 3., first paragraph, line 19, change "individual's" to "individuals".
30. On page 35051, third column, under Chapter V, A., third paragraph, line 10, change "an" to "and".
31. On page 35055, first column, under Public Witness, after line 7, insert *"New York City, New York"* and then insert the following:

Mrs. Joan Reminick, East Northport, New York.
Mrs. Judith Reminick, Brooklyn, New York.
Mrs. Estelle Cohen, Bronx, New York.
Dr. Elaine Wolfson, Political Science Researcher, New York City, New York.
Mrs. Doris Haire, National Women's Health Network, New York City, New York.
Mrs. Mary Tracy, Glen Cove, New York.
Mr. Vincent T. Euk, Co-ordinator, Long Island Coalition for Life, Woodhaven, New York.
Dr. Fritz Fuchs, Chairman, Department of Obstetrics and Gynecology, Cornell University Medical Center, New York City, New York.
Ms. Cynthia Cohen, Merrick, New York.
Mr. William B. Smith, Medical-Moral Ethics Board, Archdiocese of New York.
Ms. Francine R. Simring, Executive Director, Coalition for Responsible Genetic Research, New York City, New York.
Ms. Jeanne Head, New York State Right to Life, New York, New York.
Mr. Alfred F. Moran, Executive Vice-President of Planned Parenthood, New York City, New York.
Mr. Nicholas Austin Bunin, KIDS News, New York City, New York.
Mrs. Pat Moran, KIDS News, New York City, New York.

32. On page 35055, first column, under Public Witnesses, before line 8, insert "San Francisco, California".

33. On page 35056, first column, under Chapter VI, B., first paragraph, line 15, change "legitmate" to "legitimate".

34. On page 35058, first column, under Chapter VI, Conclusion (3), Discussion 2., line 3, change "abnoraml" to "abnormal".

35. On page 35058, first column, under Chapter VI, Conclusion (3), Discussion 2., line 4, change "undertermined" to "undetermined".

36. On page 35058, second column, under Chapter VI, Conclusion (4), Discussion, first paragraph, line 5, change "clincial" to "clinical".

37. On page 35058, second column, under Chapter VI, Conclusion (4), Discussion, first paragraph, line 24, "their" (sic).

[FR Doc. 79-34018 Filed 11-03-79; 8:45 am]

BILLING CODE 4110-85-M

Advisory Council on Education Statistics; Meeting

Notice is hereby given, pursuant to Section 10, Pub. L. 92-463, that a meeting of the Advisory Council on Education Statistics will be held on November 28, 1979, from 9:00 a.m. to 5:00 p.m., in Room 3000, FOB #6, 400 Maryland Avenue, S.W., Washington, D.C. 20202. The meeting will be continued on November 29, 1979, from 9:00 a.m. to 12:30 p.m., at the same location.

The Advisory Council on Education Statistics is mandated by Section 406(c) of the General Education Provisions Act as added by Section 501(a) of the Education Amendments of 1974, Pub. L. 93-380 (20 U.S.C. 1221e-1(c)), to advise the Secretary of the Department of Health, Education, and Welfare, and the Assistant Secretary for Education, and the National Center for Education Statistics (NCES); and "shall review general policies for the operation of the Center and shall be responsible for establishing standards to ensure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence."

The meeting agenda will include an Administrator's Report summarizing recent developments regarding budget, staff, and major projects of the National Center for Education Statistics.

Other major topics will include a review of the data on teacher supply and demand, discussion of clearance of Center and Council reports and the burden created by mandated surveys. The Council will also discuss the contents of its annual report. The meeting is open to the public. For additional information direct queries to:

Executive Director,
Advisory Council on Education Statistics,
Room 3153-E, FOB #6,
400 Maryland Avenue, S.W.,
Washington, D.C. 20202.

Records shall be kept of all Council proceedings and shall be available for public inspection in the Office of the Administrator, National Center for Education Statistics, located at 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Signed at Washington, D.C., on November 6, 1979.

Marie D. Eldridge,

Administrator, National Center for Education Statistics.

[FR Doc. 79-34754 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-12-M

Telecommunications Demonstration Program; Solicitation for Grants; Correction

In FR Doc. 79-32221 appearing on page 60634 in the issue of Friday, October 19, 1979, delete the last sentence in subsection D(1), and replace it with:

"Two (2) copies of each application plus the original are required."

Dated: October 31, 1979.

John L. Palmer,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 79-34827 Filed 11-8-79; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-27357]

Alaska Native Claims Selection

Correction

In FR Doc. 79-31875 appearing on page 59671 in the issue of Tuesday, October 16, 1979, in the third column, in the fifth full paragraph, "October 15, 1979" should read "November 15, 1979".

BILLING CODE 1505-01-M

[F-14885-A (Anch.)]

Alaska Native Claims Selection

This decision rejects improperly filed Sec. 14(h)(1) selections and approves lands in the area of Quinhagak for conveyance to Qanirtuug, Inc.

I. Section 14(h)(1) Applications Rejected in Entirety

Calista Corporation filed selection applications AA-11306 and AA-11214 on April 28, 1976; and AA-11397 to AA-11405, inclusive, AA-11493, and AA-11494 on June 2, 1976 pursuant to Sec. 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(h)(1976)). Section 14(h) and Departmental regulations issued thereunder authorized the Secretary of the Interior to withdraw and convey only unreserved and unappropriated public lands. Since all available lands encompassed in the subject Sec. 14(h)(1) applications had been properly withdrawn under Sec. 11 and selected by Qanirtuug, Inc. under Sec. 12 of ANCSA, these lands were not unreserved or unappropriated at the time of selection by Calista Corporation. Therefore, the following applications must be and are hereby rejected in their entirety:

Seward Meridian, Alaska (Unsurveyed)

T. 4 S., R. 72 W.
AA-11401 Sec. 27 (fractional), E½NE¼SE¼.
Containing approximately 20 acres.
AA-11404 Sec. 31 (fractional), N½SW¼NW¼.
Containing approximately 20 acres.
AA-11405 Sec. 32, NE¼NW¼NW¼SE¼.
Containing approximately 2.5 acres.
T. 6 S., R. 72 W.
AA-11306 Sec. 31, N½NE¼NE¼.
Containing approximately 20 acres.
T. 7 S., R. 72 W.
AA-11494 Sec. 10 (fractional), N½SW¼NW¼.
Containing approximately 20 acres.
T. 5 S., R. 73 W.
AA-11402 Sec. 29, S½SW¼NE¼.
Containing approximately 20 acres.

AA-11403 Sec. 29 (fractional), W½SW¼SE¼.
Containing approximately 20 acres.
AA-11400 Sec. 32, N½SW¼NW¼.
Containing approximately 20 acres.
T. 6 S., R. 73 W.
AA-11493 Sec. 4, NW¼NW¼SE¼, SW¼SW¼NE¼.
Containing approximately 20 acres.
T. 3 S., R. 74 W.
AA-11397 Sec. 6 (fractional), N½SW¼SE¼.
Containing approximately 20 acres.
T. 4 S., R. 74 W.
AA-11399 Sec. 26, S½SE¼SW¼.
Containing approximately 20 acres.
T. 6 S., R. 74 W.
AA-11214 Sec. 21, S½NE¼NE¼SE¼, N½SE¼NE¼SE¼.
Containing approximately 10 acres.
T. 3 S., R. 75 W.
AA-11398 Sec. 13, S½NW¼SE¼.
Containing approximately 20 acres.

When this decision becomes final, these applications will be closed of record.

II. Lands Proper for Village Selection, Approved for Interim Conveyance or Patent

On November 13, 1974, Qanirtuug, Inc., for the Native village of Quinhagak, filed selection application F-14885-A under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C..1601, 1611 (1976)), for the surface estate of certain lands in the vicinity of Quinhagak.ge a09no3.204

Qanirtuug, Inc. in its November 13, 1974 application excluded several bodies of water. Because certain of those water bodies have been determined to be nonnavigable, they are considered to be public lands withdrawn under Sec. 11(a)(1) and available for selection by the village pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. Section 12(a) and 43 CFR 2651.4 (b) and (c) provide that a village corporation must, to the extent necessary to obtain its entitlement, select all available lands within the township or townships within which the village is located, and that additional lands selected shall be compact and in whole sections. The regulations also provide that the area selected will not be considered to be reasonably compact if it excludes other lands available for selection within its exterior boundaries. For these reasons, the water bodies which were improperly excluded in the November 13, 1974, application are considered selected by Qanirtuug, Inc.

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 108,622 acres, is considered proper for acquisition by Qanirtuug, Inc. and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Seward Meridian, Alaska (Unsurveyed)

T. 4 S., R. 72 W.
Secs. 20 to 24, inclusive, all;
Secs. 25 to 27, inclusive, excluding Kanektok River;
Sec. 28, excluding Kanektok River and Native allotment F-17289;
Secs. 29 and 30, all;
Sec. 31, excluding Kanektok River;
Sec. 32, excluding Kanektok River and Native allotment F-16603;
Sec. 33, excluding Kanektok River and Native allotments F-16603 and F-17289;
Secs. 34, 35 and 36, all.
Containing approximately 9,877 acres.
T. 6 S., R. 72 W.
Sec. 19, all;
Secs. 20 to 33, inclusive, all.
Containing approximately 3,774 acres.
T. 7 S., R. 72 W.
Secs. 3 and 4, all;
Secs. 9 and 10, all;
Secs. 14 and 15, all;
Secs. 22 and 23, all;
Secs. 25 and 26, all;
Sec. 35, all.
Containing approximately 7,040 acres.
T. 4 S., R. 73 W.
Secs. 25 to 33, inclusive, all;
Secs. 34, 35, and 36, excluding Kanektok River.
Containing approximately 7,547 acres.
T. 5 S., R. 73 W.
Secs. 4, 5, and 6, excluding Kanektok River;
Secs. 7, 8, and 9, all;
Secs. 16 to 36, inclusive, all.
Containing approximately 16,948 acres.
T. 6 S., R. 73 W.
Secs. 3 and 4, all;
Secs. 10 and 11, all;
Secs. 13 and 14, all;
Secs. 23, 24, and 25, all.
Containing approximately 5,760 acres.
T. 3 S., R. 74 W.
Secs. 2 to 11, inclusive, all;
Secs. 14 to 23, inclusive, all;
Secs. 26 to 30, inclusive, all;
Sec. 13 (fractional), all;
Secs. 32 to 35, inclusive, all.
Containing approximately 19,106 acres.
T. 4 S., R. 74 W.
Secs. 2 to 5, inclusive, all;
Secs. 6, 7, and 8 (fractional), all;
Secs. 9, 10, and 11, all;
Secs. 14 and 15, all;
Secs. 16, 17, 21, and 22 (fractional), all;
Secs. 23 and 25, all;
Secs. 26, 27, 34, and 35 (fractional), all;
Sec. 36, all.
Containing approximately 11,481 acres.
T. 5 S., R. 74 W.
Secs. 1, 2, and 3, excluding Kanektok River;
Secs. 4 and 5, all;
Secs. 6 and 7 (fractional), all;
Sec. 8, excluding Kanektok River and U.S. Survey 876;
Sec. 9, excluding Kanektok River, U.S. Survey 876, Native allotment F-18531 Parcel B, and ANCSA Sec. 3(e) application AA-28298;
Sec. 10, excluding Kanektok River;
Secs. 11 to 15, inclusive, all;
Sec. 16, excluding U.S. Survey 876;
Sec. 17, excluding Kanektok River and U.S. Survey 876;
Sec. 18 (fractional), excluding Kanektok River;
Secs. 19 and 20 (fractional), all;
Secs. 21 to 28, inclusive, all;
Secs. 29, 32 and 33 (fractional), inclusive, all;
Secs. 34, 35, and 36, all.
Containing approximately 17,974 acres.
T. 6 S., R. 74 W.
Secs. 2 and 3, all;
Secs. 4 and 9 (fractional), all;
Secs. 10, 11, 14, and 15, all;
Secs. 16 and 21 (fractional), all;
Secs. 22, 23, and 26, all;
Secs. 27 and 28 (fractional), all.
Containing approximately 7,500 acres.
T. 3 S., R. 75 W.
Sec. 1, all;
Secs. 2 and 11 (fractional), all;
Sec. 12 (fractional), excluding Native allotment F-15592;
Sec. 13 (fractional), all.
Containing approximately 1,585 acres.
T. 5 S., R. 75 W.
Sec. 1 (fractional), all.
Containing approximately 30 acres.
Aggregating approximately 108,622 acres.

Calista Corporation filed regional in lieu selection application AA-8099-1 on December 17, 1975 for the subsurface estate pursuant to Sec. 12(a)(1) of ANCSA and 43 CFR Part 2652 as to lands in:

Seward Meridian, Alaska (Unsurveyed)

T. 7 S., R. 72 W.
Secs. 14 and 23.
Containing approximately 1,280 acres.

The above-described lands lie within those selected by Qanirtuug, Inc. for the Village of Quinhagak. Calista Corporation will receive title to the subsurface estate at the time the village receives title to the surface estate. This acreage will not be charged against Calista Corporation's in-lieu entitlement.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976));

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of

December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in casefile F-14885-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: Travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs Gross Vehicle Weight (GVW)).

One Acre Site—The uses allowed for a site easement are: Vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

a. (EIN 1 D1, D9, C3) An easement for an existing access trail twenty-five (25) feet in width from Quinhagak in Sec. 17, T. 5 S., R. 74 W., Seward Meridian, northwesterly to eek. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

b. (EIN 2 C5) An easement for a proposed access trail twenty-five (25) feet in width from trail EIN 1 D1, D9, C3 in Sec. 6, T. 5 S., R. 74 W., Seward Meridian, northeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

c. (EIN 3 D1, C3) An easement for an existing and proposed access trail twenty-five (25) feet in width from Quinhagak in Sec. 17, T. 5 S., R. 74 W., Seward Meridian, easterly generally paralleling the south side of the Kanektok River to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

d. (EIN 4 D1, D9, C3) An easement for an existing access trail twenty-five (25) feet in width from Quinhagak in Sec. 17, T. 5 S., R. 74 W., Seward Meridian, southeasterly generally paralleling the coast to Platinum. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

e. (EIN 7 D9) A one (1) acre site easement upland of the ordinary high water mark in Sec. 34, T. 4 S., R. 73 W., Seward Meridian, on the right bank of the Kanektok River. The uses allowed are those listed above for a one (1) acre site. The season of use will be limited to summer.

f. (EIN 7a C4) An easement for a proposed access trail twenty-five (25) feet in width from site EIN 7 D9 in Sec. 34, T. 4 S., R. 73 W., Seward Meridian, northerly to public land. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use is limited to summer.

g. (EIN 18 E) An easement for a proposed access trail from public lands in Sec. 15, T. 6 S., R. 73 W., Seward Meridian, easterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use is limited to winter.

h. (EIN 22 C5) An easement to establish a clear area adjacent to Quinhagak Airport for the safe operation of aircraft landings and take-offs. This area is to include the land and the space over the land, commencing with the west end of the runway at Quinhagak Airport, in Sec. 9, T. 5 S., R. 74 W., Seward Meridian, and extending forward from the runway, one thousand (1000) feet. The width of the easement will vary from one hundred and fifty (150) feet at the end of the runway, to one thousand one hundred and fifty (1150) feet, at the opposite end. The easement uses reserved include the right to clear and keep clear the above described land from any and all obstructions infringing upon or extending into the Airport Imaginary Surfaces as set forth in Part 77 of the Federal Aviation Regulations, as amended.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1976))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act, any valid existing right recognized by Alaska Native Settlement Act shall continue to have whatever right of access as is now provided for under existing law;

3. Airport lease F-19406, containing approximately 79.2 acres, located in Secs. 3, 9 and 10, T. 5 S., R. 74 W., Seward Meridian, Alaska (Unsurveyed), issued to the State of Alaska, Department of Public Works, Division of Aviation, under the provisions of the act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214 (1970));

4. A right-of-way, F-19207, portions of which are 50 feet and portions 100 feet in width, in Sec. 9, T. 5 S., R. 74 W., Seward Meridian, Alaska (Unsurveyed), for a Federal Aid Highway. Act of August 27, 1958, as amended, 23 U.S.C. 317; and

5. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Qanirtuug, Inc. is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 108,622 acres. The remaining entitlement of approximately 6,578 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Calista Corporation when the surface estate is conveyed to Qanirtuug, Inc. and shall be subject to the same conditions as the surface conveyance.

Within the above described lands, only the following inland water body is considered to be navigable:

Kanektok River

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in THE TUNDRA DRUMS. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate,

and any parties who failed or refused to sign the return receipt shall have until 12/10/79 to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Qanirtuug, Inc., Quinhagak, Alaska 99655.
Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501.

Sue A. Wolf,
Chief, Branch of Adjudication.

[FR Doc. 79-34700 Filed 11-08-79; 8:45 am]
BILLING CODE 4310-84-M

[N-3912]

Nevada; Classification Revoked and Lands Open to Entry

October 31, 1979.

On December 18, 1969, (FR, Vol. 34, No. 242) the following described land was classified for exchange under the Point Reyes National Seashore Act of September 13, 1962, (16 U.S.C. 459c). The classification segregated the land from all forms of disposal under the public land laws including the mining laws. The Point Reyes National Seashore exchange program is no longer active. Therefore, Classification N-3912 is hereby revoked for the following described land:

Mount Diablo Meridian

T. 32 N., R. 56 E.,
Secs. 1,2,3,10,11,12;
Sec. 13, N½;
Sec. 14, N½;
Sec. 15, N½;
T. 33 N., R. 56 E.,
Sec. 36, NE¼NE¼, W½W½, SE¼SW¼, S½SE¼.
T. 32 N., R. 57 E.,
Sec. 6, Lots 1-6, inclusive, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 8, S½NW¼.
T. 33 N., R. 57 E.,
Sec. 32, NE¼SW¼, S½SW¼.
T. 35 N., R. 57 E.,
Sec. 2;
Sec. 12, N½, N½S½.
T. 36 N., R. 57 E.,
Sec. 2, Lots 1-3, inclusive, S½N½, S½;
Sec. 10, E½SE¼;
Secs. 12,14,24,25,36.
T. 37 N., R. 57 E.,
Sec. 36.
T. 35 N., R. 58 E.,
Sec. 6.
T. 36 N., R. 58 E.,
Secs. 6,8,18,20;
Sec. 28, W½NE¼, NW¼NW¼, S½NW¼;
Sec. 30;
Sec. 32, N½, NW¼SW¼, SE¼SW¼, E½SE¼.
T. 37 N., R. 58 E.,
Sec. 32.
T. 42 N., R. 63 E.,
Sec. 1, Lots 2-4, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼.
T. 43 N., R. 63 E.,
Sec. 2, SW¼NW¼, NW¼SW¼;
Sec. 3, Lot 1, SE¼NE¼;
Sec. 11, NE¼NW¼, W½SE¼;
Sec. 14, W½NE¼, E½SE¼;
Sec. 23, NE¼NE¼;
Sec. 24, SW¼NW¼, W½SW¼;
Sec. 25, N½NW¼, SE¼NW¼, SW¼;
Sec. 36, W½.
T. 44 N., R. 63 E.,
Sec. 22, SW¼NE¼, W½SE¼;
Sec. 27, S½NW¼, SW¼;
Sec. 28, E½SE¼;
Sec. 33, E½NE¼;
Sec. 34, W½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼.

The land described aggregates approximately 19,000 acres.

At 10 a.m., on November 1, 1979, the lands shall be open to operation of the public land laws including location under the mining laws, subject to valid existing rights and the requirements of applicable law. The land has been open continually to applications and offers under the mineral leasing laws. All valid applications received at or prior to 10 a.m., on December 1, 1979 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning this land should be addressed to the Bureau of Land Management, 300 Booth Street, Reno, Nevada 89509.

John H. Trimmer,
Acting Chief, Division of Technical Services.

[FR Doc. 79-34740 Filed 11-8-79; 8:45 am]
BILLING CODE 4310-84-M

[W-45070]

Sale of Public Lands in Rock Springs, Wyo.

November 2, 1979.

The following described lands have been identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, at no less than the fair market value shown:

Sixth Principal Meridian, Wyoming

Township 19 North, Range 105 West, Section 28:

Parcel No.	Legal description and lot No.	Acreage	Value
1	17	20.17	$51,800
2	18	20.70	120,000
3	19	20.72	130,500
4	20	20.72	97,500
5	21	20.74	180,000
6	22	31.1	275,000
7	26	20.79	137,000
8	27	20.78	160,000
9	28	20.78	189,000
10	29	20.77	104,000
11	30	20.77	72,500
12	31	20.76	162,000

Where and When

The sale will be held at the new City Hall, 212 D Street, Rock Springs, Wyoming, on December 18, 1979 at 1:00 P.M.

Purpose

The lands are being offered for sale to meet the residential development needs of the City of Rock Springs, Wyoming. The lands have been annexed to and incorporated within that city and are zoned R-1, single family residential. The sale is consistent with the Bureau's planning for the lands involved. The public interest will be served by offering these lands for sale.

Terms and Conditions

Sale of these lands is subject to existing rights-of-way of record and any other valid, existing rights. Rights-of-way for arterial and collector streets have been dedicated by the United States in order to provide access for the general public to the sale lands and to adjacent public lands. Those rights-of-way are shown on the Plat of Section 28 Subdivision dated September 6, 1978.

Conveyance of these lands by the Secretary of the Interior shall not exempt the purchasers from compliance with applicable Federal or State law and compliance with State and local land use plans.

Reservations

All minerals in the lands will be reserved to the United States in accordance with Section 209(a) of the Federal Land Policy and Management Act of 1976.

Rights-of-way for ditches and canals will be reserved under 43 U.S.C. 945.

Bidding Information and Instructions

Bidder qualifications The Federal Land Policy and Management Act requires that bidders be U.S. citizens or, in the case of a corporation, subject to the laws of any state or the U.S. Bids must be made by the principal (the one desiring to purchase the land) or his agent (someone representing him).

Bid Standards No bid will be accepted for less than the appraised price and bids must include all the lands contained in the parcel.

Method of Bidding The land will be sold by a combination of sealed and oral bids. Sealed bids may be submitted by mail or in person and/or oral bids may be made at the sale.

Sealed bids will be accepted if received at the Bureau of Land Management, Rock Springs, District Office, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901, prior to 11:00 A.M. on December 18, 1979.

Sealed bids may be submitted by mail or in person, and must contain a certified check, post office money order, bank draft, or cashier's check, made payable to the Bureau of Land Management, for *at least twenty percent (20%)* of the amount of the total bid for the parcel.

Sealed bid envelopes must be marked in the lower left hand corner as follows:

Rock Springs, Wyoming Public Land Sale
Bid Parcel No. ——
Sale date: ——

On the day of the sale, all those wishing to participate in the oral bidding will be required to register and receive a numbered bid card. This bid card will ensure easy identification of bidders during the auction and a permanent record of addresses. Preregistration of bidders will begin at 9:00 A.M. December 18, 1979, at the new City Hall, 212 D Street, Rock Springs, Wyoming, and continue until close of sale. The sale will begin at 1:00 P.M. and will continue until the last parcel is offered for sale.

The high sealed bid for each parcel will be announced prior to invitation for oral bids. Oral bidding will begin at the level of the high sealed bid received. Parcels will be sold in the sequence they appear in this notice.

All oral bids will be received in minimum $100 increments. The high bid will establish the sale price. The highest bidder can pay in full at the sale or pay a nonrefundable 20 percent (20%) of the purchase price at the sale and the balance within 30 days. Payment may be made by personal check, certified check, money order, or cashier's check, made payable to the Bureau of Land Management, or by cash. Final payment of full purchase price is to be made on or before January 18, 1980, at the BLM's Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

Final Details All bids will be either returned, accepted, or rejected no later than 30 days after the sale date. Once high bids are accepted and citizenship or corporate qualifications are met, the patent (deed of title) will be issued as soon as possible.

Further Information/Inquiries

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of public discussions, is available for review at the Rock Springs District Office, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901 (phone AC 307 382-5350).

For a period of 30 days from the date of this notice, interested parties may submit comments to the Secretary of the Interior (LLM-320). Any adverse comments will be evaluated by the Secretary of the Interior who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become the final determination of the Department of the Interior.

Dan Baker,
State Director.

[FR. Doc. 79-34739 Filed 11-8-79; 8:45 am]
BILLING CODE 4310-84-M

Identification of Coal Production Regions Having Major Federal Coal Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Identification of Federal Coal Management Program Coal Production Regions.

SUMMARY: On July 19, 1979, the Bureau of Land Management (BLM) promulgated a final rulemaking for the management of federally-owned coal (44 FR 42584-42652). That rulemaking set out he procedures the Secretary of the Interior will use in carrying out his authority to manage federally-owned coal.

In keeping with those regulations, this notice establishes coal production regions for the management of federally-owned coal as called for by 43 CFR 3420.3-1(a)(1).

FOR FURTHER INFORMATION CONTACT: H. Robert Moore (202) 343-4636, Office of Coal Management, Bureau of Land Management, Washington, D.C. 20240

SUPPLEMENTARY INFORMATION: As set out in the Federal coal management regulations, the coal production regions serve three main purposes. First, they are the geographic areas for which the Secretary, guided by the coal production goals of the Department of Energy, establishes regional Federal coal leasing targets. Second, they represent the administrative regions within which the BLM, with guidance from regional coal teams, will conduct coal activity planning to identify potential lease tracts and schedule competitive lease sales. Tracts will be chosen only from land suitable for further consideration for coal development identified through the BLM's or other Federal surface management agency's land use planning process. Third, the coal production regions serve to identify those areas in which the Department may offer competitive coal leases for sale after land use planning, activity planning, and environmental analysis have been completed.

In delineating the coal production regions set out in this notice, the Department has considered the following factors: 1. Similarity in type and situation of coal; 2. General transportation and markets; 3. Broad economic and social-cultural similarities; 4. Administrative efficiency; and 5. Presence of Federal leases, preference right lease applications, and other indications of industry interest in Federal coal.

Of the 12 coal production regions in the nation, 6 regions are set out in this notice in their entirety. These 6 regions contain federally-owned coal of major interest. These are the Green River-hams Fork, Uinta-southwestern Utah, Powder River, San Juan River, Fort Union, and Denver-Raton Mesa Coal Production Regions.

In addition, for two other regions, Southern Appalachian and Western Interior, a smaller subregion is set out for the purposes of Federal coal lease target setting, preparation of land use studies, and activity planning. The Federal Leasing target for these regions will be met from within these subregions through the coal activity planning process. With the exception of these two subregions, activity planning in any coal region wholly east of the 100th meridian is unlikely in the foreseeable future, and the Bureau of Land Management will accept applications to lease coal in accordance with 43 CFR 3425.1-5(b). The regions wholly east of the 100th meridian are the Texas, Western Interior, Eastern Interior, Northern Appalachian, Central Applachian, and Southern Appalachian coal production regions.

Leasing by application within the coal production regions defined in this notice will be accepted only under the provisions of 43 CFR 3425.1-4. Applications for western Federal coal outside of the boundaries specified in this notice can be made in accordance with 43 CFR 3425.1-5(a).

All regions and subregions and described on the basis of county

boundaries to ensure greater data compatibility between Federal coal management program planning and State and local planning. Thus, even though only a small part of a county may possess coal resources, the entire county is included in the region or subregion.

The regions set out in this notice are nearly the same as those set out in the final environmental impact statement, *Federal Coal Management Program*, April 1979. These coal production regions are described in Appendix J of that document. Six regions (Northern Appalachian, Central Appalachian, Southern Appalachian, Eastern Interior, Western Interior, and Texas) remain as described in Appendix J. Counties which are not classified in Appendix J and counties moved from one production region (as shown in Appendix J) to another are noted with an asterisk. In some instances counties have been deleted from the original Appendix J list due primarily to the fact that these counties contain relatively small quantities of Federal coal that are not anticipated to provide substantial contributions of Federal coal in the coal production region. This is the case with the Idaho, Utah, and northernmost counties of the Green River-Hams Fork region and the South Dakota and easternmost counties of the Fort Union region. It should be noted, however, that if future circumstances indicate that substantial production may occur from these counties subsequent boundary changes can be made to any of the coal production regions set out in this notice to reinstate these counties into the coal region. All future changes will be announced via Federal Register notice.

COAL PRODUCTION REGIONS (HAVING MAJOR FEDERAL COAL INTERESTS)

Green River-Hams Fork Coal Production Region

Colorado Counties

Grand	Rio Blanco*
Jackson	Routt
Moffat	

Wyoming Counties

Albany	Sublette
Carbon	Sweetwater
Lincoln	Uinta

Uinta-Southwestern Utah Coal Production Region

Utah Counties

Carbon	San Juan*
Daggett*	Sanpete
Duchesne	Sevier
Emery	Summit*
Garfield	Uintah
Grand	Utah
Iron	Wasatch
Kane	Washington
Morgan*	Wayne

Colorado Counties

Delta	Montrose*
Garfield	Ouray*
Gunnison	Pitkin
Mesa	San Miguel*

Powder River Coal Production Region

Wyoming Counties

Big Horn*	Johnson
Campbell	Natrona
Converse	Niobrara
Crook	Sheridan
Goshen*	Weston

Montana Counties

Big Horn	Rosebud
Golden Valley	Treasure
Musselshell	Yellowstone
Powder River	

San Juan River Coal Production Region

New Mexico Counties

Bernalillo	Sandoval
Catron	San Juan
Lincoln	Santa Fe
Los Alamos	Socorro
McKinley	Valencia
Rio Arriba	

Colorado Counties

Archuleta	Montezuma
Dolores	San Juan
La Plata	

Fort Union Coal Production Region

Montana Counties

Carter	Prairie
Custer	Richland
Daniels	Roosevelt
Dawson	Sheridan
Fallon	Wibaux
Garfield*	Valley
McCone	

North Dakota Countries

Adams	McLean
Billings	Mercer
Bowman	Morton
Burke	Mountrail
Burleigh	Oliver
Divide	Renville
Dunn	Sheridan
Golden Valley	Slope
Grant	Stark
Hettinger	Ward
McHenry	Williams
McKenzie	

Denver-Raton Mesa Coal Production Region

Colorado Counties

Adams	Huerfano
Arapahoe	Jefferson
Boulder	Las Animas
Denver	Morgan
Douglas	Park
Elbert	Pueblo*
El Paso	Teller*
Fremont	Weld

New Mexico Counties

Colfax

Southern Appalachian Coal Production Region (Alabama Subregion)

Alabama Counties

Fayette	Tuscaloosa
Jefferson	Walker

Western Interior Coal Production Region (Oklahoma Subregion)

Oklahoma Counties

Atoka	Le Flore
Coal	Latimer
Haskell	Pittsburg

Dated: November 2, 1979.

Ed Hastey,

Associate Director, Bureau of Land Management.

[FR Doc. 79-34811 Filed 11-8-79; 8:45 am]

BILLING CODE 4310-84-M

Briefing by Regional Coal Team for the Southern Appalachian Coal Production Region, Alabama Subregion

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Announcement of Southern Appalachian Regional Coal Team Briefing.

SUMMARY: The second briefing of the Regional Coal Team for the Southern Appalachian Coal Region, Alabama Subregion, is being held in accordance with the Federal coal management regulations, 43 CFR 3400.4(b). The team will review the progress being made in the tract delineation process and may consider preliminary tract ranking factors. Public attendance is welcome at the Regional Coal Team Briefing.

DATE: November 27, 1979, 10:30 a.m.

ADDRESS: The regional coal team briefing will be held at the Holiday Inn South, located at the junction of I-59 and McFarland Blvd., Tuscaloosa, Alabama.

FOR FURTHER INFORMATION CONTACT: H. Robert Moore, Regional Coal Team Chairman, (202) 343-4636.

November 6, 1979.

Arnold E. Petty,

Acting Associate Director.

[FR Doc. 79-34812 Filed 11-8-79; 8:45 am]

BILLING CODE 4310-84-M

Colorado and Wyoming; Intent To Rank Tracts for Proposed Leasing of Federal Coal of Green River-Hams Fork Coal Production Region; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Correction.

SUMMARY: A notice of intent to rank Federal coal tracts in the Green River—Hams Fork Coal Production Region of Colorado and Wyoming appeared in the Federal Register on Wednesday, October 31, 1979 (44 FR 62602). This correction notice is being published: (1) To provide a more definitive description

of the Federal tracts being considered for possible leasing in this region; (2) to change the time of the first regional coal team ranking meeting; (3) to change the time and date of the second regional coal team ranking meeting; (4) and to extend the date for submitting comments on the factors that may be considered by the regional coal team in ranking the preliminary lease tracts.

DATES: The regional coal team ranking meetings will be held on November 14, 1979; November 27, 1979; and will continue through November 28, 1979, if needed. All meetings will begin at 8:00 a.m. Comments on the factors that may be considered in ranking the preliminary lease tracts will be accepted by the regional coal team chairman through November 23, 1979.

ADDRESSES: The meetings will be held at the Geological Survey, Room 412, Building 85, Denver Federal Center, West 6th Avenue and Kipling, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Gary J. Wicks, Regional Coal Team Chairman, (801) 524-5311.

SUPPLEMENTAL INFORMATION: On pages 62602-62603 of the Federal Register of October 31, 1979, the Bureau of Land Management announced that the regional coal team for the Green River—Hams Fork Coal Region would be conducting meetings on November 14, November 28, and, if needed, on November 29, 1979. The second ranking meeting, which was scheduled for November 28, 1979, and November 29, 1979, if needed, has been changed to November 27, 1979, and will continue through November 28, 1979, if needed. All meetings will begin at 8:00 a.m. rather than at the previously scheduled time of 9:00 a.m. The location of the meetings remains the same. Public attendance is welcome at all regional coal team meetings.

In addition, the notice of October 31, 1979, requested comments by noon, November 13, 1979, on the factors that may be considered by the regional coal team in ranking the preliminary lease tracts. The deadline for receiving those comments has been extended until the close of business on November 23, 1979.

On page 62603 of the October 31, 1979, notice, a brief description of the location of the preliminary lease tracts in the Green River-Hams Fork Region was provided. Appendix A to this correction notice provides a more complete locational description of those preliminary tracts that will be considered for possible leasing in 1981. This additional information is being provided in accordance with the commitment made by the regional coal team chairman at the October 16, 1979, meeting of the regional coal team:

Arnold E. Petty,
Acting Associate Director.
November 6, 1979.

Appendix A

Colorado.—Bell Rock

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 6 N., R. 91 W.						
Sec. 30						
Lot 4						12.00
S½S½			12.00			
Lot 8	56.52			56.52		
T. 6 N., R. 92 W.						
Sec. 25						
Lot 1	12.69			12.69		
Lot 2			42.19	42.19		
N½			320.00	320.00		
Total	69.21		379.19	431.40		12.00

Colorado.—Danforth Hills No. 1

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 3 N., R. 93 W.						
Sec. 11						
Lots 3, 5, 6, 8 and 13, NW¼, N½, SW¼, SW¼SW¼			345.47	345.47		
Sec. 14						
Lot 3			37.60			37.60
Lots 4 and 5			33.72	33.72		
Sec. 15						
Lots 1, 3, 5, 11, 12, 14, W½W½, E½NW¼			462.92	462.92		
Totals			879.71	842.11		37.60

Colorado.—Danforth Hills No. 2

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 3 N., R. 93 W.						
Sec. 5						
Lots 1, 2, S½NE¼, SE¼			324.55	324.55		
Sec. 7						
Lots 4, 5, 6, 9, 10, NE¼NE¼, S½NE¼, SE¼			363.64	363.64		
Sec. 8						
All			640.00	640.00		
Sec. 17						
E½NE¼, NW¼NE¼, NE¼NW¼, E½NW¼			240.00	240.00		
SW¼NE¼, SE¼NW¼, S½	400.00			400.00		
Sec. 18						
Lots 1, 2, 5, 6, NE¼, E½NW¼			322.25	322.25		
Lots 3, 4, E½SW¼, SE¼	323.23			323.23		
Total	723.23		1,890.44	2,613.67		

Colorado.—Danforth Hills No. 3

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 3 N., R. 93 W.						
Sec. 19						
Lot 4, NE¼			202.65	202.65		
Lots 1, 2, 3, E½NW¼, E½SW¼, SE¼	446.59			446.59		
Sec. 20						
Lot 2			24.35			24.35
N½SW¼, W½SE¼, NE¼SE¼	600.00			600.00		
Sec. 21						
Lots 1, 3, 5, 7, 10, N½, N½SW¼, NW¼SE¼	516.49			516.49		
Lots 2, 4, 9			55.22			55.22
Lot 6			25.37	25.37		
Sec. 28						
Lots 3, 9, 10, 17			51.26			51.26
Lots 6, 7	10.70			10.70		
Lots 4, 5, 8, 12, 13, 15			91.88	91.88		
Sec. 29						
Lots 1, 4, 6, 7			112.10			112.10
Lots 2, 3, 5, 8	47.90			47.90		
Total	1,621.68		562.81	1,941.56		242.93

Appendix A—Continued

Colorado.—*Pinnacle*

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 4 N., R. 86 W.						
Sec. 7						
Lots 5, 6			68.96	68.96		
T. 5 N., R. 87 W.						
Sec. 36						
Lots 6-9, 14, 15, NW¼NW¼			244.26	244.26		
Totals			313.22	313.22		

Colorado.—*Grassy Creek*

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 5 N., R. 97 W.						
Sec. 20						
S½NE¼			80	80		
W½SE¼			80	80		
E½SW¼			80	80		
Sec. 29						
NE¼NW¼			40	40		
SW¼NW¼	40			40		
E½SW¼			80	80		
NW¼SW¼			40	40		
SW¼SW¼			40			40
Sec. 32						
Lots 3, 4			80			80
NW¼			160			160
Totals	40		720	480		280

Colorado.—*Hayden Gulch*

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 5 N., R. 89 W.						
Sec. 10						
Lots 8, 9, 14, 15			154.02	154.02		
Sec. 11						
Lot 16			41.48	41.48		
Lot 17	41.50			41.50		
Sec. 13						
Lots 6, 10-17			370.96	370.96		
Sec. 14						
All			601.07	601.07		
Sec. 15						
Lots 1, 9, 14	124.83			124.83		
Lots 2-8, 10-13, 15, 16			518.70	518.70		
Tract 51		12			12	
Sec. 16						
Lots 3, 4, 8-10			137.42	137.42		
SE¼NE¼, N½SE¼		120			120	
Sec. 21						
SE¼NE¼, SW¼, NW¼	80			80		
N½NE¼, N½NW¼SE¼, NW¼, SW¼NE¼			240	240		
N½SE¼			80	80		
Sec. 22						
All			640	640		
Sec. 23						
All			640	640		
Sec. 24						
All			640	640		
Sec. 25						
NW¼NE¼, NE¼NW¼, NE¼SE¼	120			120		
E½NE¼, SW¼NE¼, SE¼NW¼, W½NW¼, SW¼, W½SE¼, SE¼SE¼			520	520		
Sec. 26						
N½, N½S½			480	480		
Sec. 27						
N½NE¼			80	80		
T. 5 N., R. 88 W.						
Sec. 18						
Lot 17			18.01	18.01		
Sec. 19						
Lots 4, 7, 8, 13	65.8			65.8		
Sec. 30						
Lots 4, 7, 8, 13	79.68			79.68		
Sec. 31						
Lot 7	22.06			22.06		
Total	533.87	132	5,161.66	5,695.53	132	

Appendix A—Continued

Colorado.—*Horse Gulch*

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 5 N., R. 92 W.						
Sec. 4						
NW¼						
T. 6 N., R. 92 W.						
Sec. 29						
SW¼NE¼, S½NW¼, SW¼, W½SE¼						
Sec. 30						
S½N½, S½						
Sec. 31						
NE¼NE¼						
Sec. 32						
E½, N½NW¼						
Sec. 33						
S½, SW¼						
T. 6 N., R. 93 W.						
Sec. 14						
SW¼NW¼, W½SW¼						
Sec. 15						
All						
Sec. 22						
NE¼, N½NW¼, SE¼NW¼, SE¼						
Sec. 23						
All						
Sec. 24						
SW¼, NE¼S½NW¼, SW¼, NW¼NE¼, S½SE¼						
Sec. 25						
All						
Totals	1,640		2,760	4,400		

Colorado.—*Iles Mountain*

T. 5 N., R. 92 W.						
Sec. 3						
Lot 17	57.16			57.16		
Sec. 10						
NE¼	160			160		
S½	320			320		
Lot 3	37.57			37.57		
SE¼NW¼	40			40		
Sec. 11						
S½SW¼	80			80		
NW¼SW¼	40			40		
SW¼NW¼	40			40		
Sec. 13						
W½ SE¼			80	80		
S½NW¼			80	80		
SW¼			160	160		
Sec. 14						
S½NE¼			80	80		
NW¼	160			160		
W½SW¼	80			80		
E½SW¼			80	80		
SE¼			160	160		
Sec. 15						
All	620			620		
Sec. 22						
Lot 1			47.37	47.37		
NE¼NE¼			40	40		
Lot 3			40			40
NE¼NW¼			40			40
Sec. 23						
N½			320	320		
SE¼			160	160		
Sec. 24						
All			640	640		
Sec. 25						
N½N½			160	160		
Totals	1634.73		2087.37	3642.1		80

Colorado.—*Lay*

T. 8 N., R. 92 W.						
Sec. 19						
Lot 8, SE¼W¼, S½SE¼			152.82	152.82		
Sec. 30						
All			624.48	624.48		
Sec. 31						
Lot 5, N½NE¼, NE¼NW¼	36.40		120	156.40		

Appendix A—Continued

Colorado.—*Lay*—Continued

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 8 N., R. 93 W.						
Sec. 20						
Lots 1, 2, 3, S½SE¼			159.99	159.99		
Sec. 21						
Lots 5, 6, 7, 8, S½SW¼	80		96.07	177.06		
Sec. 22						
SW¼SW¼			40	40		
Sec. 24						
S½SE¼, SE¼SW¼			120	120		
Sec. 25						
All	40		600	640		
Sec. 26						
S½, S½N½	440		40	480		
Sec. 27						
S½, S½N½, NW¼, NW¼	160		360	520		
Sec. 28						
All	200		440	640		
Sec. 29						
All	241.24		409	490.24		
Sec. 30						
Lots 3, 4, E½SW¼, SE¼	80		234.17	314.17		
Sec. 31						
All	40		588.88	628.88		
Sec. 32						
All			633.60	396.56		237.04
T. 8 N., R. 94 W.						
Sec. 25						
S½	320			320		
Sec. 26						
S½			320	320		
Sec. 27						
SE¼	40		120	160		
Sec. 33						
All			640	640		
Sec. 34						
All	40		600	640		
Sec. 35						
All	40		600	640		
Sec. 36						
All		640			640	
T. 7 N., R. 94 W.						
Sec. 1						
All			640.60	600.56		40.04
Sec. 2						
All	80.96		560.96	641.92		
Sec. 3						
All			641.92	641.92		
Sec. 4						
All	40		600.6	520.26		120.34
Totals	1,878.6	640	9,343.09	10,664.27	640	557.42

Colorado.—*Williams Fork Mountains*

T. 5 N., R. 89 W.						
Sec. 4						
Lots 1-4, S½N½, S½ (all)			643.46	643.46		
Sec. 5						
Lot 6	42.14			42.14		
Lots 5, 7-19						
Tract 43			623.51	623.51		
Sec. 6						
Lots 3, 5, SE¼, NW¼			119.30			119.30
Lots 1, 2, 4, 6, 7, S½NE¼, E½SW¼, SE¼			438.35	438.35		
Sec. 7						
Lots 1, 2, NE¼, E½NW¼			317.44	317.44		
Sec. 8						
Tract 43 (part)						
Lots 1-17 (all)			659.04	659.04		
Sec. 9						
Tract 51		150.36			150.36	
Lots 1-13			498.16	498.16		
Sec. 10						
Tract 45			150.00			150.00
Lots 1-6, 10, 11, 12, 13			264.58	264.58		
Tract 51		5.74			5.74	
T. 5 N., R. 89 W.						
Sec. 16						
Tract 51 (part)		315.36			315.36	
Lot 5	7.37			7.37		
Lots 1, 2, 6, 7			79.05	79.05		
Sec. 17						
All			640.00	640.00		
Sec. 18						
SE¼			160.00	160.00		

Appendix A—Continued

Colorado.—*Williams Fork Mountains*—Continued

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
Sec. 19						
N½ NE¼, NW¼ NW¼			120.00	120.00		
Sec. 20						
N½ N½			160.00	160.00		
T. 5 N., R. 90 W.						
Sec. 1						
Lots 5-20 (all)			669.73	669.73		
Sec. 2						
Lots 5-20 (all)			672.28	672.28		
Sec. 3						
Lots 5-20 (all)			700.03	700.03		
Sec. 4						
Lots 5-7, 10-12, 13-15, 18-20			535.08	535.08		
T. 5 N., R. 90 W.						
Sec. 9						
Lots 1-3, 6-8			268.31	268.31		
Sec. 10						
Lots 1-10, 15, 16			527.05	527.05		
Sec. 11						
Lots 1-16 (all)			683.18	683.18		
Sec. 12						
Lots 1-16 (all)			680.01	680.01		
Sec. 13						
Lots 1-8			344.30	344.30		
Sec. 14						
Lots 7, 8						
	86.01			8.601		
Lots 1, 4, 5, 6			259.63	259.63		
Total	135.52	471.46	10,212.49	10,078.71	471.46	269.30

Wyoming.—*China Butte*

T. 19 N., R. 90 W.						
Sec. 31			640			640
T. 19 N., R. 91 W.						
Sec. 34	640			640		
Sec. 35			640			640
Sec. 36		640			640	
T. 18 N., R. 91 W.						
Secs. 1, 3, 9, 11, 15, 21, 23, 27, 29, 31, 33			7,040			7,040
Secs. 2, 10, 12, 14, 22, 28, 32, 34	5,120			5,120		
Sec. 16		640			640	
T. 17 N., R. 91 W.						
Sec. 4 N½	320			320		
Sec. 5		640			640	
Sec. 6, NE½SE¼NE¼, NW¼SE¼NE¼, NE¼NE¼, E½NW¼NE¼, NW¼NE¼NE¼, N½NW¼	160			160		
Total	6,240	1,920	8,320	6,240	1,920	8,320

[1] More specific information will be provided to the regional coal team at the second ranking meeting on November 27, 1979.

Wyoming.—*Medicine Bow*

Location	Surface and coal ownership (acres)			
	Federal	State	Private	Total
T. 23 N., R. 83 W.				
Secs. 4, 6, 8, 18, 20	3,200			3,200
Secs. 5, 7, 9, 17, 19, 29			3,840	3,840
Sec. 30 NE¼, S½	480			480
Secs. 31, 33			1,280	1,280
Sec. 32 (leased)	640			640
T. 24 N., R. 83 W.				
Sec. 29			640	640
Sec. 30, NE¼, S½NW¼, S½	560			560
Sec. 31			640	640
Sec. 32	640			640
T. 23 N., R. 84 W.				
Sec. 1, E½NE¼, SE¼			240	240
Sec. 11, SE¼NE¼, SE¼			200	200
Sec. 12	640			640
Sec. 13, N½, N½SW¼, SE¼			560	560
Sec. 24, NE¼, N½SE¼	240			240

Appendix A—Continued

Wyoming.—*Medicine Bow*—Continued

Location	Surface and coal ownership (acres)			
	Federal	State	Private	Total
Sec. 25, SW¼NW¼, S½			360	360
Sec. 26, SE¼	160			160
Sec. 35, NE¼, S½NW¼, S½			560	560
Sec. 36		640		640
T. 24 N., R. 84 W.				
Sec. 36, NE¼, E½NW¼, E½SE¼	320			320
Total	6,880	640	8,320	15,840

Wyoming.—*Red Rim*

Location	Surface ownership (acres)			Coal ownership (acres)		
	Federal	State	Private	Federal	State	Private
T. 19 N., R. 90 W.						
Sec. 3, NW¼			160			160
Sec. 4, W½, NE¼	480			480		
Sec. 5			640			640
Sec. 6, E½NE¼, SW¼NE¼, W½SE¼	200			200		
Sec. 7, E½, SW¼, SE¼NW¼			520			320
Sec. 8, NE¼, E½NW¼, E½SW¼, SW¼SW¼, N½SE¼	440			440		
Sec. 9, NW¼			160			160
Sec. 17, W½			320			320
Sec. 18	640			640		
Sec. 19			640			640
Sec. 30, W½, NE¼, NW¼SE¼	520			520		
T. 19 N., R. 91 W.						
Sec. 13, E½E½, SW¼SE¼			200			200
Sec. 24	640			640		
Sec. 25			640			640
Sec. 26, E½E½	160			160		
T. 20 N., R. 89 W.						
Sec. 4, W½	320			320		
Sec. 5			640			640
Sec. 6	640			640		
Sec. 7			640			640
Sec. 8, W½, NE¼	480			480		
Sec. 9, NW¼			160			160
Sec. 17, NW¼			160			160
Sec. 18	640			640		
Sec. 19, W½			320			320
T. 20 N., R. 90 W.						
Sec. 1, SE¼, E½NE¼, SW¼NE¼			280			280
Sec. 11, E½SE¼, SW¼SE¼			120			120
Sec. 12, E½, SW¼, E½NW¼, SW¼NW¼	600			600		
Sec. 13			640			640
Sec. 14, E½, SW¼, E½NW¼	560			560		
Sec. 22, E½, SW¼	480			480		
Sec. 23			640			640
Sec. 24	640			640		
Sec. 25			640			640
Sec. 26	640			640		
Sec. 27			640			640
Sec. 28, SE¼, E½NE¼, SE¼SW¼	280			280		
Sec. 32, E½SE¼, SW¼SE¼	120			120		
Sec. 33			640			640
Sec. 34	640			640		
Sec. 35, N½			320			320
T. 21 N., R. 89 W.						
Sec. 23, SE¼SE¼			40			40
Sec. 24, S½	320			320		
Sec. 25, W½, NW¼ NE¼			360			360
Sec. 26, E½, SW¼, SE¼NW¼	520			520		
Sec. 34, SE¼, E½ NE¼, E½ SW¼, SW¼ SW¼	360			360		
Sec. 35			640			640
Total	10,320		10,160	10,320		10,160

Appendix A—Continued

Wyoming—*Rosebud*

Location	Surface ownership [1] (acres)			Coal ownership [1] (acres)		
	Federal	State	Private	Federal	State	Private
T. 23 N., R. 80 W.						
Sec. 6	640			640		
Sec. 7			640			640
T. 23 N., R. 81 W.						
Sec. 2, S½	320			320		
Sec. 3			640			640
Sec. 10, N½, SE¼	480			480		
Sec. 11			640			640
Sec. 12	640			640		
Sec. 14	640			640		
Sec. 24, N½	320			320		
Total	3,040		1,290	3,040		1,290

Wyoming—*Seminoe II*

T. 22 N., R. 81 W.						
Sec. 4, W½ W½	160			160		
Sec. 5			640			640
Sec. 6	640			640		
Sec. 7, N½, N½S½, SE¼SE¼			520			520
Sec. 8, NW¼ NE¼, W½	320		40	320		40
T. 22 N., R. 82 W.						
Sec. 1, SE¼			160			160
Sec. 12, E½	320			320		
T. 23 N., R. 81 W.						
Sec. 7			640			640
Sec. 8	640			640		
Sec. 16		640			640	
Sec. 17			640			640
Sec. 18	640			640		
Sec. 19			640			640
Sec. 20	640			640		640
Sec. 29			640			640
Sec. 30	640			640		
Sec. 31			640			640
Sec. 32	640			640		
Sec. 33, W½			320			320
T. 23 N., R. 82 W.						
Sec. 2, SE¼	160			160		
Sec. 11, NE¼			160			160
Sec. 12	640			640		
Sec. 13, NE¼ NE¼			40			40
Sec. 25, NE¼, E½ SE¼			240			240
Sec. 36, NE¼NE¼	40				40	
Total	5,480	640	5,320	5,440	680	5,320

[FR Doc. 79-34613 Filed 11-8-79; 8:45 am]
BILLING CODE 4310-84-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on the Lower Apalachicola Floodplain in Gulf, Calhoun, and Liberty, Counties, Fla.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: (1) This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS). The purpose of the study is to evaluate alternatives and select a course of action that will be effective in conserving the biological productivity in the hardwood forested floodplain of the Lower Apalachicola River Basin.

The biological productivity of the hardwood floodplain along the Lower Apalachicola is threatened by several ongoing and potential actions including: Land clearing for agriculture, timber management activity including clear cutting and conversion to pine, drainage and diking within the forested floodplain, and housing developments. All are occurring and can be expected to increase or intensify. Changes in floodplain vegetation from hardwoods

to pine, or to agriculture can drastically affect the biological productivity in the lower floodplain ecosystem and estuary.

The Apalachicola River Basin is a unique relatively undisturbed (but seriously threatened) natural area, in its present condition. It possesses many regionally and nationally important endangered values, and supports a high diversity and abundance of fish and wildlife. The high productivity of the Apalachicola is dependent upon river functions. Detritus and macrophytes from upland areas, freshwater inflow and inflow of dissolved nutrients fuel the system which produces prolific sport fish, commercial fish and shellfish fisheries. This interlocking system of river hardwood forested floodplain, wooded swamp, fresh and brackish marsh, shallow, barrier island bay is a unique example of a river dominated ecosystem that is still functionally intact. Because it is a system, it is necessary that each functional part be maintained to recognize full biological productivity.

The Apalachicola Bay and the Florida Environmentally Endangered Lands in the Lower Apalachicola River are presently proposed for National Esturine Sanctuary status. This resource commitment plus fish and wildlife conservation of the floodplain lands currently in private ownership below Blountstown, Florida will provide the additional management necessary to perpetuate the long-term fish and wildlife productivity of the Lower Apalachicola River Basin.

(2) Some alternatives identified for evaluation include Federal acquisition in fee title or by easement of a National Wildlife Refuge, acquisition by another Federal or State agency, increased ecological surveillance and no action.

(3) This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by December 10, 1979.

ADDRESS: Comments should be addressed to: Area Manager, U.S. Fish and Wildlife Service, 900 San Marco Boulevard, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Wendell Metzen, Ascertainment Biologist, U.S. Fish and Wildlife Service, 900 San Marco Boulevard, Jacksonville, Florida 32207—Telephone: (904) 791-2850.

SUPPLEMENTAL INFORMATION: The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate the DEIS will be made available to the public by spring 1980.

Dated: October 23, 1979

Kenneth E. Black,

Regional Director, USF&W, Atlanta, Ga.

[FR Doc. 79-34701 Filed 11-8-79; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Known Leasing Area (Phosphate); Webster Range-Dry Ridge, Idaho

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, and Secretary's Order No. 2948, Federal lands within the State of Idaho have been classified as subject to the competitive phosphate leasing provisions of the Mineral leasing Act of February 25, 1920 (30 U.S.C. 211), as amended.

The name of the area, the effective date, and the total acreage involved are as follows: (12) Idaho; Webster Range-Dry Ridge (Idaho) Known Leasing Area (Phosphate); March 1, 1978, 23, 574.95 acres.

A diagram showing the boundaries of the area classified for competitive leasing has been filed with the appropriate land office of the Bureau of land Management. Copies of the diagram and the land description may be obtained from the Regional Conservation Manager, Western Region, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025.

Dated: November 1, 1979.

J. S. Cragwall, Jr.,

Acting Director.

[FR Doc. 79-34702 Filed 11-8-79; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Boston National Historical Park; Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463, that a meeting of the Boston National Historical Park Advisory Commission will be held November 30, 1979 at Building 5, the former Officer's Club, Charlestown Navy Yard, Boston, Massachusetts, beginning at 11 a.m.

The Commission was established by Pub. L. 93–431 to advise the Secretary of the Interior on matters relating to the development of the Boston National Historical Park.

The members of the Advisory Commission are as follows:

Mr. Richard Berenson, Chairman, Brookline.
Ms. Gail Seybold, Boston.
Mr. William B. Osgood, Boston.
Mr. Guy Beniati, Boston.
Mr. Maurice O'Shea, Charlestown.
Mr. Byron Rushing, Boston.
Mrs. Katharine Kane, Boston.

The matters to be discussed at this meeting include:

1. Review of General Management Plan for downtown historic sites and Bunker Hill.
2. Plans for Public Review of General Management Plan for Charlestown Navy Yard.
3. Transportation plans and concerns.
4. Freedom Trail Maintenance and Improvement.
5. Summer Interpretive Initiative.
6. Boston NHP Cooperating Association.
7. Dorchester Heights.
8. USS *Cassin Young*.
9. Progress Report on the Water-Chelsea Connector and Gate 4 roadway projects at the Navy Yard.
10. Old South Meeting House Repairs.
11. Cooperative Agreements.
12. Possible Kiosk at Faneuil Hall.
13. Jubilee 350 plans.
14. Park Administration and Operations.

The meeting will be open to the public. However, facilities and space and limited, and it is expected that not more than 50 persons will be able to attend the session. Any member of the public may file with the committee a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact the Superintendent, Boston National Historical Park, at 617–242–5644.

Dated: November 1, 1979.

L. J. Hovig,

Acting Regional Director, North Atlantic Region.

[FR Doc. 79-34748 Filed 11-8-79; 8:45 am]

BILLING CODE 4310-70-M

Boston National Historical Park; Public Meetings

Notice is hereby given that public discussion concerning the draft General Management Plan for the 5 downtown sites of the park and Bunker Hill will be conducted at three different places and

on three different dates during the month of November.

Included among the sites comprising Boston National Historical Park are the 6 which are to be subjects of discussion at these meetings: Faneuil Hall, Paul Revere House, Old North Church, Old South Meeting House, Old State House and Bunker Hill. As these are the premier sites along Boston's Freedom Trail, the General Management plan includes suggested treatment of that marked walking route. The National Park Service Visitor Center at 15 State Street, Boston, is also discussed in the plan with recommendations.

The first meeting will be at the Bunker Hill Museum, 43 Monument Square, Charlestown, at 8 p.m. on the 26th of November. The second will be at the North End Union, 20 Parmenter Street, Boston, at 8 p.m. on the 27th. The third will take place at the National Park Service Visitor Center on the second floor at the above address, at 4 p.m. on the 29th.

Copies of the draft General Management Plan will be available at the office of the Superintendent, Boston National Historical Park, 15 State Street, Boston, after November 12.

All interested persons are invited to attend and participate in these meetings. They may also address their comments in writing to the Superintendent at the above address, Zip code 02109.

Dated: November 1, 1979.

Larry J. Hovig,

Acting Regional Director, North Atlantic Region.

[FR Doc. 79-34747 Filed 11-8-79; 8:45 am]

BILLING CODE 4310-70-M

Curecanti National Recreation Area; Environmental Review of the Assessment of Alternatives for the General Management Plan and Development Concept Plan

An environmental review of the assessment of alternatives for the Curecanti National Recreation Area General Management Plan and Development Concept Plan has been prepared and is ready for distribution.

The review identifies the plan for management and use of the area, identifies boundary changes considered desirable, special concerns about wildlife habitat, and discusses wilderness. In addition, it identifies 16 primary development sites indicating the facilities to be provided at each. Trails, minor camping areas, boat-in camping sites, scenic overlooks, and fishing access are identified and discussed.

The review finds the management and development proposals selected to be a minor Federal action with minimal environmental, social, or economic impacts and not of a controversial nature. Consequently, no environmental impact statement will be prepared.

Copies of the document may be secured by writing either of the following: Regional Director, Rocky Mountain Region, National Park Service, 655 Parfet, P.O. Box 25287, Denver, Colorado 80225 or Superintendent, Curecanti National Recreation Area, P.O. Box 1040, Gunnison, Colorado 81230.

Dated: November 1, 1979.

James B. Thompson,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 79-34745 Filed 11-8-79; 8:45 am]

BILLING CODE 4310-70-M

Kalaupapa National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a public meeting of the Kalaupapa National Historical Park Advisory Commission will be held in Honolulu, Hawaii. The meeting will be on December 13, 1979, and will begin at 10:00 a.m. HST at the Waikiki-Kapahulu Library, 400 Kapahulu Ave.

The purpose of the meeting is to formulate a draft recommendation concerning potential National Park Service management of the Kalaupapa Peninsula. The meeting is open to the public. Anyone may file, with the Commission, a written statement concerning matters to be discussed. A summary of the meeting will be available for public inspection four weeks after the meeting at the Hawaii State Office, National Park Service, 300 Ala Moana Blvd., Suite 6305, Honolulu, HI 96850.

Dated: October 31, 1979.

John H. Davis,

Acting Regional Director, Western Region, National Park Service.

[FR Doc. 79-34748 Filed 11-8-79; 8:45 am]

BILLING CODE 4310-70-M

Jackson Hole Airport Noise Abatement Plan; Proposed Plan, Environmental Assessment and Public Hearing

A proposed noise abatement plan has been prepared by the Jackson Hole Airport Board and the National Park Service for the Jackson Hole Airport, which is located in Grand Teton National Park, Wyoming. An environmental assessment has been prepared by the National Park Service. A joint hearing has been scheduled by the Board and the National Park Service to provide the public an opportunity to participate in the final preparation of the plan.

The Jackson Hole Airport is operated under a Special Use Permit issued by the National Park Service to the Jackson Hole Airport Board. The permit, which expires in April 1995, authorizes commercial and general aviation, and sightseeing/flight instruction flights. It is recognized that safe operation of the Jackson Hole Airport will necessitate intrusions of aircraft noise on portions of both more sensitive and less sensitive areas of the park, but that intrusions can be significantly reduced below present levels over most of the park through implementation of a noise abatement plan.

In response to the above problem, Section 2(d) of the Special Use Permit authorizing operation of the Airport requires preparation of a noise abatement plan by the National Park Service (NPS) and the Jackson Hole Airport Board. Formulation of a plan began in July 1978 with a meeting attended by the NPS, Airport Board, and Federal Aviation Administration (FAA). Data gathering assignments were made to each participant.

Attention was given to both flights in and out of the airport and to flights over the park. Noise level studies conducted in 1975 and 1978 by the University of Wyoming under contracts sponsored by the National Park Service and the Federal Aviation Administration, respectively, were utilized to initially determine existing noise patterns, and to consider the potential effectiveness of controlled routing by the use of a temporary control tower during September 1978.

The resulting proposed plan includes facility, procedural, enforcement, and monitoring proposals including a temporary airport traffic control tower, aircraft noise limitations, aircraft flight routings and operating procedures, and related enforcement, education, and permanent noise level monitoring efforts. Early drafts of the plan and assessment were reviewed and commented on by the Environmental Protection Agency (EPA), which has legal authorities, responsibilities, and expertise in the area of noise control. EPA will play a substantial role in the development and implementation of the second stage of the noise abatement effort as outlined below.

As indicated in the plan, the problem of noise intrusion is to be dealt with in two stages. The plan itself is an

immediate effort to minimize noise over the park. The second stage will be a noise monitoring effort as part of a more comprehensive noise monitoring and research program to be co-sponsored by the National Park Service and EPA. The plan will be subject to review and change as necessary at least on an annual basis. Information gained from the monitoring program will be considered at these annual meetings.

In addition to the elements contained in the draft plan, which follows this notice, the National Park Service is seeking public review on: (1) a curfew, which would limit the daily hours of airport operation; (2) discontinue training flights which are currently permitted in the Fixed Base Operator's contract with the Airport Board; and (3) limit the number of flights per day, based on a yearly average.

DATES: The public hearing will be held on December 10 in Jackson, Wyoming, and December 11 in Denver, Colorado. Written statements for the record will be received through January 15.

ADDRESSES: Send written statements and requests to make oral statements for the record at the hearing to: Hearing Officer, Grand Teton National Park, Moose, Wyoming 83012.

The public hearing at Jackson, Wyoming, will begin at 7:30 p.m. on December 10, and will be held at the Snow King Ramada Inn's Grand Room. The public hearing at Denver, Colorado, will begin at 7:30 p.m. on December 11, and will be held at the Holiday Inn West, 14707 West Colfax Avenue.

FOR FURTHER INFORMATION CONTACT: Park Superintendent, Grand Teton National Park, Moose, Wyoming 83012; Regional Director, Rocky Mountain Region, National Park Service, P.O. Box 25287, Denver, Colorado 80225; Airport Manager, Jackson Hole Airport, P.O. Box 1707, Jackson, Wyoming 83001.

Copies of the plan are available from any of the above addresses. Environmental assessments are available from the Park Superintendent or the Regional Director.

Dated: November 7, 1979.

Daniel J. Tobin,

Associate Director, Management and Operations, National Park Service.

Proposed Jackson Hole Airport Noise Abatement Plan

Prepared by Jackson Hole Airport Board and National Park Service

1. Need for Noise Abatement Plan

Because the Jackson Hole Airport is located in the southern end of Grand Teton National Park, it is perhaps the most environmentally sensitive airport in the nation. It is extremely important that airport operations do not unnecessarily detract from the tranquility of Teton Park which is enjoyed annually by over 4,000,000 visitors. Noise intrusions are generally identified as one of the greatest concerns of those who question the compatibility of an airport in a national park. Recognizing the environmental sensitivity of the facility, the Jackson Hole Airport Board and the National Park Service (NPS) determined that a noise abatement plan was desirable and agreed to develop such a plan in cooperation with the Federal Aviation Administration (FAA).

As the proposed plan went through several initial drafts, it was determined that it would be advisable to deal with the noise problem in two stages. The plan itself constitutes the first stage, an immediate effort to minimize noise intrusions to the extent possible. The second stage involves a more thorough examination of all noise factors in the park, including aircraft noise. This examination will involve noise monitoring and research efforts to be co-sponsored by the National Park Service and the Environmental Protection Agency (EPA). Additional information regarding this effort can be found in Item 8.

It should be emphasized that the various elements of the plan will not and cannot eliminate all aircraft noise over Grand Teton National Park. Each of the actions called for in the plan will undergo periodic evaluation as to its effectiveness, and an annual meeting will be held to consider changes in the plan.

Many details have yet to be finalized concerning various actions called for in the plan. However, these actions have been considered carefully by the Airport Board, NPS and FAA, with an understanding of which agency will take leadership roles in implementing specific activities. Implementation will occur over a period of a few months, with some actions taking effect as soon as a few weeks following adoption of the plan.

2. Facilities Required

a. Temporary Air Traffic Control Tower.—A temporary Air Traffic Control Tower is an essential element in the success of the plan. It will control aircraft operations within the designated airport traffic area and influence operations for a considerable distance outside. The tower will act as an advisory source through its communications equipment to provide important information to arriving and departing pilots as to the noise sensitivity of the park and the desired procedures to minimize noise impact. The temporary tower is critical to the basic function of the plan to keep the objectionable noise sources along paths which will preserve park values and also control noise impact on citizens in and near the Jackson community. The temporary control tower will also maintain records that can be a source of information concerning possible violations of the plan.

b. Advisory Signs.—To assist the control tower in its advisory function and avoid repeated and lengthy verbal advisories, appropriate signs will be placed adjacent to the taxiways at both ends of the runway and at conspicuous locations adjacent to the aircraft parking ramp. These signs will contain messages notifying pilots of the noise sensitivity of the area and brief instructions as to procedures to be used to reduce the impact of aircraft noise intrusions.

c. VASI on Runway 36.—Approaches from the south will be made over a low density residential area close to the airport. In order to minimize impact on this area, a Visual Approach Slope Indicator set to a minimum glide path angle of three degrees is scheduled to be commissioned in Fiscal Year 1980. Such an aid would provide guidance to VFR aircraft to keep them on a safe glide path and thus mitigate some of the impact of low level flight over these residences.

d. Airport Terminal Information System (ATIS).—An ATIS is a continuous broadcasting system which will inform pilots desiring to use the Jackson Hole Airport of flight paths, altitudes, and procedures required by the plan.

3. Noise Sensitive Areas

The National Park Service has declared that all of Grand Teton National Park is sensitive to the intrusion of aircraft noise. The most noise sensitive area is that portion lying west of the Snake River Flood Plain, from the south boundary northward to Moose Village, thence northerly along U.S. Highway 26-89-187 from Moose to Moran Junction and north of U.S. Highway 26-187 from Moran Junction to the east park boundary. All parkland lying east of that line of demarcation has been determined to be less noise sensitive and is the portion to which aircraft operations should be confined.

4. Noise Abatement Procedures

a. Aircraft Arrival Routing.—Insofar as possible, aircraft arriving at the Jackson Hole Airport should be routed to approach the airport from the east, south or southwest. This will help keep

aircraft away from the noise sensitive areas of the park. Compliance with this procedure can be realized in two ways. First, commercial, military, and FAA flight information publications will be annotated to advise pilots of the desired routing to the Jackson Hole Airport. This information could then be used by pilots in their flight planning. Secondly, the pilot will receive an advisory from the control tower after initial contact. This can also be accomplished through an ATIS broadcast which would request pilots to maneuver their aircraft to the east or south in planning their approach to the airport.

b. Departure Routing.—Control of departing aircraft is much more precise than that of arriving aircraft. All departing aircraft will be required to contact the tower prior to taxiing and to obtain the ATIS information. Thus, all pilots departing will receive routing, operating procedures, and altitude information. The ATIS information will request that the departing aircraft exit the area on an easterly, southerly, or southwesterly direction before proceeding on course, and that jet aircraft use a noise abatement takeoff procedure. Pilots desiring to depart in a northerly direction will be asked to maneuver their aircraft either to the east or west of Teton Park prior to assuming their northerly heading. Upon arrival at the Jackson Hole Airport, transient pilots will be provided a notice concerning the Jackson Hole Noise Abatement Program, which will request that they plan their departure to avoid overflight of the park.

c. Altitude Assignments.—If, for some reason, a pilot must overfly an area of the park, he will be requested to maintain a minimum altitude of 3,000 feet above ground level until necessary to descend for landing or until departing the park area. He shall also be requested to avoid overflight of the Teton Mountain Range within the park under all circumstances. These requests would be included in the ATIS broadcast.

d. Preferential Runway.—Runway 36 shall be the preferential runway for landing operations and shall be used unless the tailwind component for any aircraft is exceeded by current wind conditions or other safety factors, or air traffic considerations preclude its use. For departure operations, Runway 18 shall be the preferred runway unless the above conditions preclude its use. Preferential runway use as prescribed above will have the effect of localizing the greatest number of operations to the south of the park. When weather necessitates the use of instrument landing systems, precision instrument approaches will be made from the North. Practice instrument approaches in good weather will be discouraged.

e. Local Traffic Patterns.—Local VFR air traffic patterns for takeoff and landing operations at the Jackson Hole Airport shall be established so as to concentrate most of these operations to the east of the airport. A left-hand pattern shall be required for landing operations on Runway 18, and a right-hand pattern for landing operations on Runway 36. For local training flights of category "A" and "B" (light aircraft) where patterns can be flown in close proximity to the airport, and when the air traffic conditions will allow, pilots may fly a continuous pattern without regard to the preferential runway. This procedure will allow touch and go landing training and preclude the necesssity for departing and re-entering the traffic pattern for each landing attempt. It will also help in conserving fuel.

f. *Aircraft Noise Abatement Operating Procedures.*—Air carrier and other commercial aircraft, high performance aircraft, and large private transport aircraft using the Jackson Hole Airport will be requested to execute noise abatement approaches and departures. This request will be included in ATIS broadcasts.

Alt. g. Aircraft Noise Limitations (Paragraph Desired by Jackson Hole Airport Board).—In order to minimize noise intrusions in the noise sensitive areas of Grand Teton National Park, all airplanes, regardless of category, that exceed the 1977 FAR Part 36 certificated noise levels of 89 Effective Perceived Noise Decibels (EPNdB) for takeoff and 98 EPNdB on approach, shall be excluded from using the Jackson Hole Airport. However, convenient mass transportation is essential to support the social and economic life of an isolated community such as Jackson, Wyoming, and surface mass transportation, particularly in the winter, is poor, hazardous, and unreliable. The nation's mass air transportation system is rapidly completing a transition into jet-powered equipment; however, there are no turbojet-powered, transport category aircraft currently available for air carrier use which will meet the 1977 Federal Aviation Regulation Part 36 criteria above. Therefore, jet-powered air carrier service to the Jackson, Wyoming, airport is declared to be in the public interest and, as studies have shown, can be conducted without unacceptable environmental consequences in Grand Teton National Park and the area south of the airport. Accordingly, such service is authorized with turbojet-powered, transport category aircraft noise-certificated under 1969 Part 36 standards until adequate service is offered with newer aircraft which comply with the stated maximum noise limit. This jet-powered service may be provided only by holders of an Air Carrier Operating Certificate issued under Part 121 of the Federal Aviation Regulations.

Alt. g. Aircraft Noise Limitations (Paragraph Desired by National Park Service).—In order to minimize noise intrusions in the noise sensitive areas of Grand Teton National Park, all transport category airplanes and turbojet-powered airplanes, regardless of category, that exceed the 1977 FAR Part 36 certificated noise levels of 89 Effective Perceived Noise Decibels (EPNdB) for takeoff and 98 EPNdB on approach shall be excluded from using the Jackson Hole Airport. Piston-powered aircraft which exceed the FAA 1980/ICAO noise certification level of 80 dBA are also excluded.

5. Control Tower Operating Procedures and Responsibilities

a. Air Traffic Control Procedures.—Standard traffic handling and communications procedures shall be used by control tower personnel. However, preferential runway assignments, routing of aircraft, and altitude assignments shall be accomplished as specified in this plan to achieve substantial noise level reductions in the park. Advisories designed to achieve noise reduction objectives shall be jointly developed by the airport management and control tower personnel. To facilitate early contact with arriving aircraft, flight information publications will be annotated requesting pilots to contact the Jackson Hole Tower at a minimum of 30 NM range. Such early contact will enable the tower to provide the necessary advisories or approach instructions to minimize the noise impact of the arriving aircraft.

6. Enforcement Methods and Procedures

a. Resolutions, Ordinances, and Regulations.—To provide an adequate means of enforcing the requirements of this plan, it will be necessary for the County of Teton and the Town of Jackson to execute a joint County Resolution-Town Ordinance requiring compliance with the provisions of this plan and specifying penalties for violations thereof. The Airport Board shall initiate action to ensure the enactment of such legislation. The National Park Service intends to

develop Federal regulations to assist in this enforcement effort.

b. Enforcement Procedures.—Tower personnel shall maintain logs which contain information helpful in determining compliance with noise limitations of the noise plan and where operational workload permits, controllers' observations of compliance with flight tracks, altitudes, procedures, etc. These records will be available for use by the airport sponsor in determining compliance with the plan. The Jackson Hole Security Police shall periodically review tower records, initiate additional investigation, and take enforcement action as required. Detailed investigative and enforcement procedures shall be prepared by the Security Police Force.

7. Pilot and Public Education

a. National Education Efforts.—The Airport Board, NPS and FAA shall jointly arrange for publicizing this plan in Federal government flight information documents and other publications. The Airport Board shall arrange for publicizing the plan in commercial flight information publications such as those produced by the Aircraft Owners and Pilots Association, World Aviation Directory, etc. The information shall include special procedures required in the implementation of this plan, such as the requirement to contact Jackson Hole Tower at 30 NM range and to avoid overflight of the park. The Airport Board will also arrange for publication of appropriate articles in magazines published by aviation-oriented organizations and other publications. Conservation organizations will also be contacted to determine their desires as to publicity related to this effort.

b. Local Education Actions.—Upon implementation of this plan, a copy will be provided to all local pilots and the Fixed Base Operator at the Jackson Hole Airport. A special letter will be prepared for transient pilots which will be presented to them upon arrival at the airport. The letter will contain a condensed version of the noise abatement plan and will outline the action to be taken during flight planning for departure, including aircraft operating procedures during departure. Extensive publicity will also be arranged in the local media to inform the public of the provisions of the plan.

8. Aircraft Noise Monitoring and Research

As part of a general regionwide noise research program, an ongoing noise monitoring effort will be conducted for the purposes of measuring noise impact by aircraft over the park, determining the effectiveness of the airport noise abatement plan, and relating aircraft noise to other noise sources in the total sound environment. This program will be co-sponsored and funded by the NPS and EPA, with participation by the Airport Board, FAA and other interested land management agencies. Teton County and the U.S. Forest Service will be invited to participate in this effort, as it particularly concerns the area south and east of the airport. The program's scope of work will serve as an attachment to the plan. Periodic reports will be made available to all other interested agencies and the general public. Information gained from this effort will be used as appropriate in the annual evaluation of the plan.

[FR Doc. 79-34880 Filed 11-8-79; 8:45 am]
BILLING CODE 4310-70-M

Office of the Secretary

[INT FES 79-58]

Proposed Development Concept Plan, Giant Forest/Lodgepole, Sequoia and Kings Canyon National Parks, Calif.; Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a final environmental statement for the proposed Development Concept Plan, Giant Forest/Lodgepole, Sequoia and Kings Canyon National Parks, California.

The final environmental statement considers the removal of facilities from Giant Forest, development of a new lodging center and waste water treatment plant at Clover Creek, construction of a day-use parking and transit facility at Wolverton Corrals, and reorganization of the campground and employee housing at Lodgepole.

Copies are available from or for inspection at the following locations:

Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102

Los Angeles Field Office, New Federal Building, Room 1013, Los Angeles, California 90012

Superintendent, Sequoia and Kings Canyon National Parks, Three Rivers, California 93271

Dated: November 5, 1979.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-34703 Filed 11-8-79; 8:45 am]
BILLING CODE 4310-70-M

[INT-FES-79-59]

Aravaipa Canyon Wilderness, Safford District, Ariz.; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed designation of Aravaipa Canyon as a wilderness area. The proposal involves 4,044 acres of public land in Pinal and Graham Counties, Arizona. The two alternatives considered are: Increasing the size of the proposed wilderness by 2,626 acres of adjacent public land; and No Action. No plans are contemplated for a change in present management.

A limited number of copies are available upon request to the Arizona State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th & C Streets, NW., Washington, D.C. 20240. Telephone (202) 343-5717.

Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073. Telephone (602) 261-3706.

Safford District Office, Bureau of Land Management, 425 E. Fourth Street, Safford, Arizona 85548. Telephone (602) 428-4040.

Dated: November 6, 1979.

Guy Martin,

Assistant Secretary of the Interior.

[FR Doc. 79-34744 Filed 11-8-79; 8:45 am]
BILLING CODE 4310-84-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Unsolicited Research Program; Announcement of Competitive Research Grant Program

The National Institute of Law Enforcement and Criminal Justice (NILECJ) announces a competitive research grant program, the Unsolicited Research Program (URP). Through this program, NILECJ sponsors a limited number of projects that address significant issues pertaining to adult criminal justice, that are of sound methodological design, and have potentially important implications for criminal justice policy, practice, research and/or theory.

During fiscal year 1980, two (2) funding cycles will be initiated. All papers postmarked before midnight December 31, 1979 will be considered

for funding during Cycle 1. All papers postmarked after midnight December 31, 1979 and before June 30, 1980 will be considered for funding during Cycle 2.

A total of $1,000,000 is being made available for URP during fiscal year 1980, with approximately $500,000 available for each funding cycle. The total amount of awards will depend, however, upon receipt of high quality proposals that meet all criteria. Approximately one-third of the amount available during each cycle will be allocated for grants of $60,000 or under. The range of funding for each grant will be from $10,000 to $120,000 for research of up to two years duration.

Copies of this solicitation may be obtained by sending a mailing label to: Solicitation Requests—Unsolicited Research Program, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Dated: October 30, 1979.

Approved:

Harry M. Bratt,

Acting Director, NILECJ.

[FR Doc. 79-34738 Filed 11-8-79; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-5799 and 5800]

Barnes & Tucker Co., Mine No. 20 and Mine No. 25; Negative Determination Regarding Application for Reconsideration

By application dated October 10, 1979, the petitioning union 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 mining metallurgical coal at mines #20 and #25 at Barnes and Tucker Company, Barnesboro, Pennsylvania. The determination was published in the Federal Register on October 5, 1979, (44 FR 57524).

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 petitioning union claims in its application that the Barnes and Tucker Company lost potential coal customers in the domestic market because it could not compete with imported coal and coke. Also, the petitioner, by providing the names of two coal customers, challenges the adequacy of the Department's survey.

The Department's review revealed that workers at Barnes and Tucker mines #20 and #25 did not meet the "contributed importantly" test of Section 222 of the Trade Act. Workers at mine #20, which is owned by Barnes and Tucker, were denied because all of the coal mined from that mine has been exported since early 1978. Mine #25 has been operated by Barnes and Tucker under contract with a steel company which owns the mine. Workers at this mine were denied certification since the steel company for which they work did not purchase any imported coal in 1978 or in the first half of 1979 while its purchases of domestic metallurgical coal increased during this period. While this steel company does import coke, such purchases decreased in 1978 compared to 1977 and in the first seven months of 1979 compared to the same period in 1978.

The inability to obtain potential domestic business is not a basis for certification under the Trade Act. The Department's customer survey included the two coal customers mentioned in the petitioner's application, one customer was the steel company for which Barnes and Tucker contracted while the other customer had not purchased coal from Barnes and Tucker in the last eighteen months. The Department's survey showed that imports of coke and coal did not contribute importantly to worker separations at mines #20 and #25 at Barnes and Tucker.

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., 1st day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-34785 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6241]

Bishop Coal Co., Dry Fork Mine; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 23, 1979 in response to a worker petition received on October 17, 1979 which was filed on behalf of workers and former workers mining coal at the Dry Fork mine of the Bishop Coal Company, Bandy, Virginia. The petition alleges that imports of coke caused layoffs beginning in April 1979.

On March 8, 1979, workers at both mines (Bishop mine and Dry Fork mine) of the Bishop Coal Company were denied eligibility to apply for adjustment assistance (TA-W-4584). On September 7, 1979, workers at the two mines of the Bishop Coal Company were again denied eligibility to apply for adjustment assistance (TA-W-5721). The petition alleged that imported coke had caused layoffs in April 1979. That investigation revealed no evidence that indicated that increased imports of coke had contributed importantly to the April layoffs.

Since an investigation has already been conducted pursuant to the facts and statements presented in the current petition (TA-W-6241) and since the current petition presents no additional information pursuant to the previous determinations (TA-W-4584 and 5721) that would change the previous determinations, another investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 31st day of October 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-34786 Filed 11-8-79; 8:45am]

BILLING CODE 4510-28-M

[TA-W-6005]

Carthage Shirt Corp.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 11, 1979 in response to a

worker petition received on September 4, 1979 which was filed on behalf of workers and former workers producing men's shirts and ladies' blouses at Carthage Shirt Corporation, Carthage, Tennessee. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' woven dress, business, sport, and uniform shirts increased both absolutely and relative to domestic production from 1977 to 1978 and increased absolutely in the first six months of 1979 compared to the like period in 1978. U.S. imports of men's and boys' knit sport and dress shirts, excluding T-shirts, increased both absolutely and relative to domestic production from 1977 to 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased both absolutely and relative to domestic production from 1977 to 1978.

The Department of Labor conducted a survey of the manufacturers that contracted work to Carthage Shirt Corporation. The survey revealed that manufacturers which reduced contract work with Carthage Shirt Corporation did not import men's shirts or ladies' blouses, nor did they utilize foreign contractors for the production of these garments. A survey was then conducted with the retail customers of those manufacturers which reported declining company sales. Retail customers responding to the survey increased their purchases of imported men's shirts and ladies' blouses and decreased their purchases from the domestic manufacturers from 1977 to 1978 and in the first eight months of 1979 compared to the first eight months of 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's shirts and ladies' blouses produced at Carthage Shirt Corporation, Carthage, Tennessee 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 Carthage Shirt Corporation, Carthage, Tennessee who became totally or partially separated from employment on or after January 28, 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 5th day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-34787 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-619]

Cedar Coal Co., Cabin Creek, W. Va.; Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on October 15, 1979 in response to a worker petition received on October 10, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining steam coal at Cedar Coal Company, Cabin Creek, West Virginia. In the following determination, 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.

Cedar Coal Company, a wholly-owned subsidiary of Appalachian Electric Power, operates a complex of surface and underground coal mines. All coal extracted from these mines is steam coal used by Appalachian Electric Power to generate electricity in its commercial power plants. All coal consumed by Appalachian Electric Power is produced domestically.

U.S. imports of bituminous coal are negligible, being less than one percent of domestic production.

Conclusion

After careful review, I determine that all workers of Cedar Coal Company, Cabin Creek, West Virginia 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 1st day of November 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-34788 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5888]

Clearwater Finishing Plant, Clearwater, S.C.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibiity to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on August 23, 1979 in response to a worker petition received on August 21, 1979 which was filed by the Machine Printers and Engravers Association on behalf of workers and former workers printing textile cloth at Clearwater Finishing Plant, Clearwater, South Carolina. In the following determination, without regard to weather 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.

The ratio of U.S. imports of finished fabric to domestic production was 2.0 percent in 1978. U.S. imports decreased absolutely in the first six months of 1979 when compared with the same period in 1978.

A Department of Labor survey revealed that customers of Clearwater Finishing Plant (both direct customers and customers of Clearwater's parent firm) who decreased purchases of finished fabric and increased purchases of imported finished fabric represented an insignificant proportion of the firm's decline in sales.

Conclusion

After careful review, I determined that all workers of Clearwater Finishing Plant, Clearwater, South Carolina 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 31st day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-34789 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6025]

Crane Co., Chattanooga Valve Plant, Chattanooga, Tenn.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 17, 1979 in response to a worker petition received on September 11, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing steel valves for the Crane Company, Chattanooga Valve Plant, Chattanooga, Tennessee. In the following determination, 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.

Employment at the Crane Company, Chattanooga Valve Plant increased in the first three quarters of 1979 compared to the same period in 1978. Employment declined slightly from the first quarter to the second quarter of 1979 primarily due to normal attrition.

Production and the value of sales for the plant increased from 1977 to 1978, and in the first half of 1979 compared to the same period in 1978.

The petition alleged that the Chattanooga Valve plant was planning to lay off workers in September 1979. The investigation revealed that the anticipated layoffs have not occurred.

Conclusion

After careful review, I determine that all workers of the Crane Company, Chattanooga Valve Plant, Chattanooga, Tennessee 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 30th day of October 1979.

James F. Taylor,

Director, Office of Mangement, Administration and Planning.

[FR Doc. 79-34790 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5268]

Going On Sportswear, Inc., Hauppauge, and New York, N.Y.; Negative Determination Regarding Application for Reconsideration

On July 9, 1979, one of the petitioners 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 of Going On Sportswear, Inc., Hauppauge, New York, and New York, New York. The determination was published in the Federal Register on June 22, 1979 (44 FR 36513-4).

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 believes administrative reconsideration is warranted for the following reasons: That the change in manufacturing strategy for the product lines of Going On Sportswear, Inc., away from the exclusive domestic manufacture of ladies' sportswear toward a mixture of domestic and foreign manufacture of ladies' sportswear caused Going On Sportswear to close down; and that the increasing employment trend cited by the Department in its determination is misleading because an increase in employment in the fourth quarter of each year is typical for a manufacturer of ladies' sportswear and not indicative of the generally adverse employment situation at Going On Sportswear.

The Department issued the negative determination on the basis of its finding that increased imports of articles like or directly competitive with the ladies' sportswear manufactured by Going On Sportswear did not contribute importantly to the closing of the workers' firm. This finding was made following an investigation which revealed that the viability of Going On Sportswear was closely linked to that firm's successful addition of foreign-manufactured sportswear to its domestically-manufactured sportswear. The addition of the foreign-manufactured sportswear, which was imported through two wholly-owned subsidiaries of Going On Sportswear (i.e., Sunday's Workclothes, Inc., and Headline Sportswear, Inc.) initially succeeded in increasing average employment in 1978 compared to 1977. However, the imported sportswear line failed when it was discovered that a shipment of imports was defective and, consequently, had to be marketed at a loss. This loss weakened Going On Sportswear and its subsidiaries financially and ultimately forced the closing of the firm.

The petitioner's claim that the change in manufacturing strategy away from the exclusive manufacture of ladies' sportswear toward a mixture of domestic and foreign manufacture of ladies' sportswear caused the closing of the firm may be a reasonable one though the causal linkage may have been more indirect than the petitioner's claim suggests. However, the correctness of this claim does not advance the petitioner's argument that the Department should reverse its initial determination since it is not in the nature or intent of the Trade Act of 1974 to provide assistance to workers who have lost employment predominantly as a result of defective imported articles.

With regard to the petitioner's claim that the employment trend cited by the Department is misleading, it should be noted that the Department's determination stated: "(The) influx of imported garments caused Going On Sportswear to actually increase employment in 1978 compared to 1977." The employment trend cited here refers to average employment for the years 1977 and 1978 derived from the firm's weekly employment records, rather than solely fourth quarter employment as the petitioner suggests.

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., this 31st day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-34791 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 19, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 19, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 31st day of October 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Annetta of California, Inc. (ILGWU)	Pico Rivera, Calif	9/5/79	8/29/79	TA-W-6,308	Women's leather coats.
Brown Shoe Co. (United Feed & Commercial Workers International Union).	McKenzie, Tenn	10/30/79	10/22/79	TA-W-6,309	Sandals.
Clinchfield Coal Company, Maple House Branch Mine (UMWA).	Dickenson County, Va	10/10/79	9/25/79	TA-W-6,310	Mining of coal.
Lee Dress Manufacturing Company (ILGWU)	Bridgeport, Conn	10/23/79	10/17/79	TA-W-6,311	Contractor of women's slacks and shirts.
Leemar Corporation (ILGWU)	Camden, N.J	10/25/79	10/18/79	TA-W-6,312	Ladies' dresses and sportswear.
Leon Clothing Manufacturing, Inc. (workers)	Boston, Mass	10/26/79	10/22/79	TA-W-6,313	Men's jackets and coats.
M & M Valley Sportswear (workers)	Holsopple, Pa	10/30/79	10/22/79	TA-W-6,314	Women's and children's outerwear and sportswear.
National Steel Corp., Midwest Steel Division (USWA).	Portage, Ind	10/30/79	10/1/79	TA-W-6,315	Flat rolled sheet steel.
National Steel Corp., Transportation Products Division (USWA).	Portage, Ind	10/30/79	10/1/79	TA-W-6,316	Nailible steel flooring for railroad cars.
Shenango, Inc. (workers)	Buffalo, N.Y	10/30/79	10/22/79	TA-W-6,317	Ingot molds and stools.
T & B Leather Fashions, Inc. (workers)	New York, N.Y	10/30/79	10/20/79	TA-W-6,318	Leather coats and jackets.
Teledyne-AMCO (USWA)	Mohnton, PA	10/30/79	10/1/79	TA-W-6,319	Electronic clutch motors for sewing machines.
United Merchants & Manufacturing, Inc., Cohama Decorative Fabrics Division (workers).	New York, N.Y	10/25/79	10/25/79	TA-W-6,320	Decorative fabrics.
U.S. Steel Corp., Fairless Works (USWA)	Fairless Hills, PA	10/25/79	10/16/79	TA-W-6,321	Carbon steel pipe.
Universal Technology, Inc. (workers)	Verona, N.J	10/30/79	10/23/79	TA-W-6,322	Assemble circuit boards.
X-L Manufacturing Company (ILGWU)	Gordo, Ala	10/30/79	10/22/79	TA-W-6,323	Men, women, and children's coats, and jackets.
Zenith Radio Corporation, Plant No. 1 (Independent Radionic Workers of America).	Chicago, Ill	10/12/79	10/4/79	TA-W-6,324	Subassembly of color TV.
Zenith Radio Corporation, Plant No. 2 (Independent Radionic Workers of America).	Chicago, Ill	10/12/79	10/4/79	TA-W-6,325	Components for color TV's and circuit boards for color TV's.
Zenith Radio Corporation, Plant No. 6 (Independent Radionic Workers of America).	Chicago, Ill	10/12/79	10/4/79	TA-W-6,326	Color TV final assembly, color TV components and subassembly.

[FR Doc. 79-34784 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6058]

K. J. Quinn & Co., Inc., Malden, Mass.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 19, 1979 in response to a worker petition received on September 17, 1979 which was filed on behalf of workers and former workers producing coatings for finishing shoes and leather goods at the Malden, Massachusetts plant of K. J. Quinn & Company, Incorporated. In the following

determination, 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.

In discussing the term "like or directly competitive" as used in the Trade Act of 1974, the Senate Finance Committee noted that under the Trade Expansion Act of 1962, the courts concluded that imported finished articles are not like or directly competitive with domestic component parts thereof, *United Shoe Workers of America, AFL-CIO v. Bedell*, 506 F. 2d 174 (1974). (S. Rept. 93-1298, 93rd Cong., 2d Sess., 1974, p. 122). In that case, the court held that imported finished women's shoes were not like or directly competitive with shoe counters.

Similarly, imports of leather shoes and leather goods cannot be considered to be like or directly competitive with coatings for finishing leather goods. Imports of finishing agents for leather must be considered in determining import injury to workers producing coatings for finishing shoes and leather goods at the Malden, Massachusetts plant of K. J. Quinn & Company, Incorporated.

The Malden, Massachusetts plant of K. J. Quinn & Company, Incorporated produces polymer coatings for finishing shoes and leather goods. The company is not corporately affiliated with any shoe or leather manufacturers; serves a variety of domestic shoe and leather manufacturers; and is completely responsible for the pay and benefits of its employees. U.S. imports of coatings for finishing shoes and leather goods are negligible.

Conclusion

After careful review, I determine that all workers at the Malden, Massachusetts plant of K. J. Quinn & 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 1st day of November 1979.

Harry J. Gilman,

Economist, Office of Foreign Economic Research.

[FR Doc. 79-34792 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5843]

Icon, Inc., Lynchburg, Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on August 9, 1979 in response to a worker petition received on August 6, 1979 which was filed on behalf of workers and former workers producing men's, women's, and children's shoes at Icon, Incorporated, Lynchburg, Virginia. The investigation revealed that the plant produces men's, women's and children's athletic shoes. In the following determination, 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 competitve 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.

The women's and girls' leather shoes manufactured by Pettyjohn Brothers Shoe Manufacturing cannot be considered to be like or directly competitve with men's, women's and children's athletic shoes made by Icon, Incorporated since February 1979. All workers producing women's casual footwear at Pettyjohn were certified as eligible to apply for adjustment assistance under a certification issued on May 13, 1977 (TA-W-1914). All workers of Icon, Incorporated who were separated from employment related to the production of casual shoes were covered under that certification. Production of athletic shoes at Icon, Incorporated began in February 1979.

Men's women's, and children's athletic shoes have not been manufactured for a sufficient length of time to permit a meaningful assessment of the effect of imports of similar articles on business conditions at Icon, Incorporated.

Conclusion

After careful review, I determine that all workers of Icon, Incorporated, Lynchburg, Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Singed at Washington, D.C., this 1st day of November 1979.

James F. Taylor,

Director, Office of Managment, Administration and Planning.

[FR Doc. 79-34793 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6115]

Joseph M. Herman Shoe Co., Inc., Scarborough, Maine; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 27, 1979 in response to a worker petition received on September 21, 1979 which was filed on behalf of workers and former workers producing leather work boots and shoes at the Joseph Herman Shoe Company of Maine, Scarborough, Maine. The investigation revealed that the company produces men's work shoes and outdoor footwear and that the correct name of the company is Joseph M. Herman Shoe Company, Inc. In the following determination, 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.

Evidence developed during the course of the investigation revealed that the Joseph M. Herman Shoe Company, Inc. transferred some of its production from its plant in Scarborough, Maine to a new plant in Pittsfield, Maine which was opened early in 1979.

Production at the Scarborough plant had increased in 1978 compared to 1977, but declined in the first three quarters of 1979 compared to the first three quarters of 1978. However, the combined production of both the Scarborough and Pittsfield plants was higher in the first

three quarters of 1979 than the level of production at the Scarborough plant during the same period in 1978. All of the styles produced at the Pittsfield plant had previously been produced at the Scarborough plant. Thus the decline in production at the Scarborough plant can be attributed to the transfer of some of its production to the new plant.

Conclusion

After careful review, I determine that all workers of the Joseph M. Herman Shoe Company, Inc., Scarborough, Maine 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 1st day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-34794 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5975]

Marion Harwood Manufacturing Co., Holston, Plant, Marion, Va.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of investigations regarding certifications of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 6, 1979 in response to a worker petition received on September 4, 1979 which was filed on behalf of workers and former workers producing men's and boys' pajamas and robes at the Holston Plant, Marion, Virginia, of the Marion Harwood Manufacturing Co. In the following determinations, without regard to whether any of the other criteria have been met for workers producing men's and boys' robes 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.

The investigation revealed that sales of robes by the Harwood Manufacturing Company Division, which sells all the garments produced by the subject firm, increased from 1977 to 1978. The Department surveyed customers accounting for the decline in sales of robes at the Harwood Manufacturing Company Division in the first half of 1979 compared with the like period of 1978. None of the respondents indicated that they increased imports of robes during this period.

For workers producing men's and boys' pajamas all of the criteria have been met.

U.S. imports of men's and boys' pajamas and other nightwear increased absolutely and relatively in 1978 compared with 1977 and increased absolutely in the first half of 1979 compared with the like period of 1978.

The Harwood Manufacturing Company Division, which sells the garments produced at the Holston plant, began importing pajamas in January 1979. Division imports of pajamas represented a substantial proportion of Division sales of this product in the first half of 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the men's and boys' pajamas produced at the Holston Plant in Marion, Virginia of the Marion Harwood Manufacturing Company 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 Holston Plant in Marion, Virginia of the Marion Harwood Manufacturing Company engaged in employment related to the production of men's and boys' pajamas who became totally or partially separated from employment on or after November 18, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 1st day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-34795 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5952]

Menser Industries, Inc., Plymouth, Ind.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 4, 1979 in repsonse to a worker petition received on August 27, 1979 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing bedspreads, baby blankets, potholders and other miscellaneous merchandise at Menser Industries, Incorporated, Plymouth, Indiana. The investigation revealed that the plant produces primarily baby blankets, bedspreads, bags (including tote, gym, overnight and launday bags) potholders, motorcycle helmet liners, blankets and shams (decorative pillow covers).

In the following determinations, with respect to the production of blankets, bedspreads, motorcycle helmet liners and shams and 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.

U.S. imports of blankets and bedspreads declined in the January–June period of 1979 compared to the same period of 1978.

U.S. imports of motorcycle helmet liners are negligible.

The Office of Trade Adjustment Assistance conducted a survey of Menser's customers which purchased blankets, bedspreads, motorcycle helmet liners, and shams. The survey revealed that Menser's customers did not import bedspreads or helmet liners in 1977, 1978 or the first eight months of 1979.

The one manufacturer purchasing blankets and shams from Menser reported reduced sales of those products in the first eight months of 1979 compared to the same period of 1978. A survey was then conduced with this manufacturer's major retailers. The retailers responding to the survey did not purchase any balankets or shams from foreign sources in 1977, 1978 or in the January–August period of 1979.

With respect to the production of bags and potholders, all of the criteria have been met.

The bags made by Menser Industries are included in the import and

production category Soft-Side Luggage. U.S. imports of soft side luggage increased both absolutely and relative to domestic production in 1978 compared to 1977 and increased absoloutely in the first six months of 1979 compared to the same period in 1978.

The Office of Trade Adjustment Assistance conducted a survey of the customers which purchased bags and potholders from Menser Industries. Customers representing a significant proportion of Menser's total sales of bags reported that they reduced purchases of bags from Menser and increased purchases of imported bags in 1978 compared to 1977 and in the first eight months of 1979 compared to the same period of 1978.

In addition, one customer is a manufacturer for which Menser produces on a contract basis. This manufacturer reduced its purchases of potholders from Menser and reported that its own sales to retailers declined. A survey of the retailers revealed that they reduced purchases of potholders made by Menser from the manufacturer and increased purchases of imported potholders in the first eight months of 1979 compared to the first eight months of 1978.

The workers at Menser Industries, Incorporated are engaged in employment related to the production of all product lines—bags, potholders, blankets, baby blankets, bedspreads, motorcycle helmet liners and shams. Workers are not separately identificable according to product line.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with bags and potholders produced at Menser Industries, Incorporated, Plymouth, Indiana 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 Menser Industries, Incorporated, Plymouth, Indiana, engaged in employment related to the production of bags and/or potholders, who became totally or partially separated from employment on or after August 21, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3rd day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-34793 Filed 11-8-79; 8:45 am]

4510-28-M

[TA-W-6017]

Oliver Tire & Rubber Co., Flemington, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 12, 1979 in response to a worker petition received on September 6, 1979 which was filed by the United Rubber, Cork, Linoleum and Plastic workers of America on behalf of workers and former workers producing recapping materials used for recapping tires at the Flemington, New Jersey plant of Oliver Tire and Rubber Company. In the following determination, 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.

All production activities performed at the Flemington, New Jersey plant will be transferred to another facility of Oliver Tire and Rubber Company located in the United States. The transfer is being made for reasons relating to efficiency rather than to lost business.

Imports of tread rubber are negligible or non-existent. In discussing the term "like or directly competitive" as used in the Trade Act of 1974, the House Ways and Means Committee noted that under the Trade Expansion Act of 1962, the courts concluded that imported finished articles are not like or directly competitive with domestic component parts thereof, *United Shoe Workers of America* v. *Bedell, et al.*, 506 F. 2d 174 (1974). (S. Rept. 93-1298, 93rd Cong., 2nd Sess., 1974, p. 122.) In that case, the court held that imported finished women's shoes were not like or directly competitive with shoe counters. Similarly, imported automobiles or automobile tires cannot be considered like or directly competitive with tread rubber.

Conclusion

After careful review, I determine that all workers of Oliver Tire and Rubber Company, Flemington, 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 31st day of October 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-34797 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6020]

Santini Corp., Inc., Woodbury, Tenn.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 12, 1979 in response to a worker petition received on September 6, 1979 which was filed on behalf of workers and former workers producing ladies' pants and skirts at Santini Corporation, Woodbury, Tennessee. The investigation revealed that the name of the firm is Santini Corporation, Incorporated and that it produces ladies', misses' and juniors' slacks and skirts. In the following determination, 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.

U.S. imports of womens', misses' and children's slacks and shorts declined absolutely in the first six months of 1979 compared to the same period in 1978.

U.S. imports of women's, misses' and children's skirts declined absolutely in

the first six months of 1979 compared to the same period in 1978.

The Department of Labor conducted a survey with the manufacturers that contracted work with Santini Corporation, Incorporated. Results indicated that most of the manufacturers responding to the survey either increased their contracts with other domestic contractors in 1978 compared to 1977 and in the January–July period of 1979 compared to the same period of 1978 or they plan to replace outside contract work with increasing levels of in-house production. In addition, none of the manufacturers utilized foreign contractors for the production of ladies' slacks and skirts. One manufacturer, imported finished slacks and skirts. This manufacturer, however, represented an insignificant proportion of Santini's sales for the January–July period of 1979 and also reported an increase in business with Santini during this time period as compared to the same period of the previous year.

Total company sales at Santini Corporation, Incorporated, increased in each quarter of 1978 compared to the corresponding quarter of 1977. Sales increased during the first half of 1979 in comparison to the first half of 1978, until the firm closed permanently in July of 1979.

Conclusion

After careful review, I determine that all workers of Santini Corporation, Incorporated, Woodbury, Tennessee 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 5th day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-34798 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6010]

Stein Henry Co., Philadelphia, Pa.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 11, 1979 in response to a worker petition received on September 6, 1979 which was filed on behalf of workers and former workers wholesaling meat and ground beef at the Stein Henry Company, Philadelphia, Pennsylvania.

The Stein Henry Company is primarily engaged in providing the service of repackaging and wholesale distribution of meat.

Thus, workers of the Stein Henry Company do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their service from a parent firm, a firm otherwise related to the Stein Henry Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

The Stein Henry Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in the repackaging and wholesale distribution of meat at the Stein Henry Company are employed by that firm. All personnel actions and payroll transactions are controlled by the Stein Henry Company. All employee benefits are provided and maintained by the Stein Henry Company. Workers are not, at any time under employment or supervision by customers of the Stein Henry Company. Thus, the Stein Henry Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of the Stein Henry Company, Philadelphia, Pennsylvania 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 1st day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-34799 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6011]

Sugarloaf Mining Co., Fort Smith, Ark.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 11, 1979 in response to a worker petition received on September 6, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Sugarloaf Mining Company, Fort Smith, Arkansas. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. U.S. imports of coke increased absolutely and relative to U.S. production in 1978 compared to 1977.

The Sugarloaf Mining Company mined and shipped metallurgical coal to one steel mill. In August 1979, this steel mill stopped purchasing metallurgical coal from Sugarloaf. The parent firm of this steel mill increased its purchases of imported coke in 1978 compared to 1977. Purchases of imported coke by the parent firm increased in the first eight months of 1979 compared to the same period in 1978. The steel mill increased its usage of imported coke during these periods.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with coal mined at the Sugarloaf Mining Company, Fort Smith, Arkansas 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 the Sugarloaf Mining Company, Fort Smith, Arkansas who became totally or partially separated from employment on or after September 4, 1978 are eligible to apply for adjustment assistance

under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-34600 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5956]

Textron, Inc., Talon Division, St. Louis, Mo.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 4, 1979 in response to a worker petition received on August 27, 1979 which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers of the Talon Division of Textron, Inc., St. Louis, Missouri. In the following determination, 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.

U.S. imports of zippers increased both absolutely and relative to domestic production during 1978 compared with 1977. Imports decreased both absolutely and relative to domestic producton during the first six months of 1979 compared with the first six months of 1978.

The Department conducted a survey of customers of the Talon Division. Nearly all of the surveyed customers indicated that they did not increase purchases of imported zippers while reducing purchases from Talon. Customers who did increase purchases of imports represented only a small percentage of Talon's total sales decline in 1979 and 1978.

Conclusion

After careful review, I determine that all workers of the Talon Division of Textron, Inc., St. Louis, Missouri 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 3rd day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-34601 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5957]

Walter Wright, Inc., Williamstown, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 4, 1979 in response to a worker petition received on August 27, 1979 which was filed on behalf of workers and former workers producing double knit and polyester fabrics at Walter Wright, Incorporated, Williamstown, New Jersery. In the following determination, 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.

Customers of Walter Wright, Incorporated and its predecessor, Conger Knits, Incorporated who were surveyed by the Department revealed that they did not import finished fabric in 1977, 1978, or during the first two months of 1979.

Conclusion

After careful review, I determine that all workers of Walter Wright, Incorporated, Williamstown, 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 3rd day of November 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-34602 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5958]

Ware Knitters, Inc., Calais, Maine; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for workers adjustment assistance.

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 investigation was initiated on September 4, 1979, in response to a worker petition received on August 27, 1979, which was filed on behalf of workers and former workers producing men's and women's outerwear at Ware Knitters, Incorporated, Calais, Maine. The investigation revealed that the plant produces primarily men's and women's knit shirts. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' knit sport and dress shirts, excluding T-shirts increased absolutely and relative to domestic production in 1978 compared to 1977. U.S. imports of women's, misses' and children's blouses and shirts, knit increased absolutely and relative to domestic production in 1978 compared to 1977.

Ware Knitters is primarily a contractor producing men's and women's knit shirts. Manufacturers accounting for a significant proportion of contract work done by Ware Knitters in 1978 reduced their contracts with Ware in the first eight months of 1979 and increased their purchases of imported men's and women's shirts in that time 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 men's and women's knit shirts produced at the Calais, Maine plant of Ware Knitters, Incorporated 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 the Calais, Maine plant of Ware Knitters, Incorporated who became totally or partially separated from employment on or after February 10, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Tract Act of 1974.

Signed at Washington, D.C., this 1st day of Nobember 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-34803 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6034]

Wilshire Fashions, Inc., South River, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

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 investigation was initiated on September 17, 1979 in response to a worker petition received on September 12, 1979 which was filed on behalf of workers and former workers producing ladies' outerwear at Wilshire Fashions, Incorporated, South River, New Jersey. The investigation revealed that the plant produces women's coats and jackets. In the following determination, 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.

U.S. imports of women's, misses', and children's coats and jackets decreased absolutely during the January-June period of 1979 compared to the corresponding period of 1978.

The Department of Labor conducted a survey of the sole manufacturer from whom Wilshire Fashions, Incorporated receives contract work. The survey revealed that this manufacturer did not contract with foreign sources or import women's coats and juckets during 1977, 1978 or the first eight months of 1979. The manufacturer reported increased contract orders with Wilshire during the January-August period of 1979 as compared to the corresponding period of 1978. The manufacturer also reported that its sales increased during the January-August period of 1979 compared to the January-August period of 1978.

Conclusion

After careful review, I determine that all workers of Wilshire Fashions, Incorporated, South River, 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 5th day of November 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-34804 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-28-M

Mine Safety and Health Administration

[Docket No. M-79-134-C]

Big Three Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Big Three Coal Company, Box 200, Freeburn, Kentucky, 41528, has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its No. 1 Mine located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns the illumination of underground working places in which self-propelled mining equipment is operated.

2. The petitioner believes that lighting on its loader, cutter, roof bolter and coal drill would temporarily blind equipment operators and other miners in the area due to sudden changes in illumination levels, resulting in a diminution of safety.

3. When the petitioner had lights installed on its mining machine, these lights were torn off due to small rib rolls in the mine.

4. As an alternative, the petitioner proposes to install single headlights on each side and on top of the mining machine to illuminate the working area.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: November 1, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34767 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-156-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, Post Office Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its Big Creek No. 1 Mine and Big Creek No. 2 Mine located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petition concerns the use of cabs or canopies on roof bolters in the petitioner's mines.

2. In its Big Creek No. 1 and Big Creek No. 2 mines, the petitioner is mining coal seams with minimum heights of 48 and 43 inches, respectively. Uneven roofs and floors and roof supports that extend downward an additional one and one half inches further limit clearances.

3. Due to these limited clearances, the petitioner has to install cabs or canopies on its roof bolters in the lowest configuration, limiting the space in the operator's compartment.

4. The petitioner believes that the use of cabs or canopies under these conditions would result in a diminution of safety for the following reasons:

(a) The operator's field of vision is significantly reduced by the canopy;

(b) The reduced operator compartment space increases the operator's fatigue and restricts the operator's arm and leg movements necessary to control the equipment; and

(c) Canopies can strike and damage roof suports.

5. Therefore, the petitioner requests relief from the application of the standard to its roof bolters in areas of its mines where the height of the coal seam is 51" or less.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Room 627, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington,

Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 31, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34768 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-132-C]

L & M Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

L & M Coal Company, Inc., Box 5, Matewan, West Virginia 25678, has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its No. 2 Mine located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns the illumination of underground working places in which self-propelled mining equipment is operated.

2. The petitioner believes that lighting on its roof bolter and mining machine would temporarily blind equipment operators and other miners in the area due to sudden changes in illumination levels, resulting in a diminution of safety.

3. When the petitioner had lights installed on its mining machine, these lights were torn off due to small rib rolls in the mine.

4. As an alternative, the petitioner proposes to install single headlights on each side and on top of the mining machine to illuminate the working area.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Date: October 31, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34769 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-143-C]

Mary Lee Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mary Lee Coal Company, Inc., P.O. Box 208, Tracy City, Tennessee 37387, has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its No. 27 Mine located in Sequatchie County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns the illumination of underground working places in which self-propelled mining equipment is operated.

2. The petitioner is mining a coal seam with a maximum thickness of only 36 inches.

3. In the close quarters of the petitioner's mine, required lighting for the petitioner's self-propelled mining equipment would result in abrupt changes in light levels for miners in the area, temporarily blinding miners moving to and from or about an illuminated area.

4. In addition, failures of the illumination system could lead to a further diminution of the safety of the miners involved as illumination levels abruptly change.

5. For these reasons, the petitioner requests relief from the application of the standard to its mine.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Date: October 31, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34770 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-161-C]

North American Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

The North American Coal Corp., Central Division Main Office, Powhatan Point, Ohio has filed a petition to modify the application of 30 CFR 75.305 (canopies) to its Powhatan No. 1 Mine located in Belmont County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. Numerous roof falls have left specified return airways in the petitioner's mine impassable.

2. The existing falls, however, have had no effect on the efficiency of the mine's ventilation system.

3. The airways are not part of the mine's escapeway system.

4. As an alternative to making weekly examinations for hazardous conditions in the return airway, the petitioner proposes to establish a series of air monitoring stations to routinely monitor air quality and quantity in the airways.

5. The petitioner believes that this alternative method will achieve no less protection for its miners than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Room 627, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Date: November 2, 1979.

Eckehard Muessig,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34771 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-133-C]

Vanhoose Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Vanhoose Coal Company, Inc., Box 200, Freeburn, Kentucky 41528 has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its No. 2 Mine located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The petition concerns the illumination of underground working places in which self-propelled mining equipment is operated.

2. The petitioner believes that lighting on its roof bolter and mining machine would temporarily blind equipment operators and other miners in the area due to sudden changes in illumination levels, resulting in a diminution of safety.

3. When the petitioner had lights installed on its mining machine, these

lights were torn off due to small rib rolls in the mine.

4. As an alternative, the petitioner proposes to install single headlights on each side and on top of the mining machine to illuminate the working area.

Requests for Comments

Persons interested in this petition may furnish written comments on or before December 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: November 1, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34772 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-43-M

[Dockets Nos. M-79-150-C, M-79-146-C and M-79-151-C]

Youngstown Mines Corp.; Petitions for Modification of Application of Mandatory Safety Standard

The Youngstown Mines Corporation, Dehue, West Virginia 25618, has filed three petitions to modify the application of 30 CFR 75.326 (airways and belt haulage entries), 30 CFR 75.305 (weekly examinations), and 30 CFR 75.1105 (ventilation of electrical installations) to its Dehue Mine located in Logan County, West Virginia. The petitions are docketed M-79-146-C, M-79-150-C and M-79-151-C, respectively. They are filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petitions follows:

1. The petitioner propose to redirect the airflow of ventilation in one section of its mine.

2. Under the proposed plan, the affected section will have six entries coursing air to the working face in three isolated sets of two entries each. There will be a neutral air split of two entries and two sets of intakes. The face ventilation will flow directly into the bleeder system, and what previously were return entries will become intake entries.

3. To conduct weekly inspections in some of these entries would expose miners to areas dotted by roof falls, gob material from clean up of previous roof falls and water accumulations.

4. The petitioner's proposal would require the use of a belt haulage entry to ventilate an active working place. However, the air velocity on the belt entry would be maintained at less than 25 f.p.m. and be regulated to minimize its use for ventilation.

5. The proposal further entails the location of a power distribution unit in the neutral air split. These air currents would be coursed directly into the bleeder entry instead of into the return entry.

6. The petitioner states that its proposed ventilation plan will provide the following additional advantages:

(a) A more stable ventilation flow for the affected section;

(b) Elimination of virtually all stoppage leakage to the section;

(c) More air for face ventilation; and

(d) Ventilation in excess of the mandatory requirement of 9,000 c.f.m. of air in the last cross-cut of the section, about 12,000 c.f.m. of air.

Requests for Comments

Persons interested in these petitions may furnish written comments on or before December 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Room 627, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petitions are available for inspection at that address.

Dated: November 2, 1979.

Eckehard Muessig,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-34773 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-43-M

Summary of Decisions Granting in Whole or in Part Petitions for Modification

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

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: that an alternative method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: November 1, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

Affirmative Decisions on Petitions for Modification

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-76-45	41 FR 41936	Carol Coal Company, Inc	30 CFR 77.1605(k)	Proposed maintenance procedures, traffic control system and safeguards for petitioner's elevated roadway considered acceptable alternative to berms or guards for road control. Granted with conditions.
M-76-622	41 FR 50485	United States Steel Corporation	30 CFR 77.803	Proposed use of two-circuit grounding system for petitioner's high voltage power system considered acceptable alternative method of assuring ground continuity. Granted with conditions.
M-76-692	41 FR 52913	Jim Walter Resources, Inc	30 CFR 75.326	Due to a high rate of methane liberation and conditions preventing the development of additional airways, the use of a belt entry as an intake airway considered acceptable alternative method of ventilation. Granted with conditions.

Affirmative Decisions on Petitions for Modification—Continued

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-77-3	41 FR 53503	Island Creek Coal Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous miner would result in diminution of safety in current low mining heights. Granted in part with conditions.
M-77-4	41 FR 53501	Beatrice Pocahontas Company	30 CFR 75.1710	Use of cabs or canopies on petitioner's shuttle cars, roofing machine, continuous mining machines and scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-77-79	41 FR 4911	Republic Steel Corporation	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous mining machines, shuttle cars, roof bolting machines and scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-77-221	41 FR 38483	United Pocahontas Coal Company.	30 CFR 75.1710	Use of cabs or canopies on petitioner's continuous mining machines, roof bolting machines, shuttle cars and scoop would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-77-241	41 FR 43677	Clinchfield Coal Company	30 CFR 75.1100-2	Use of fire extinguishers, independent ventilation, and concrete block bratticos for petitioner's belt conveyor tunnel considered acceptable alternative method of fire control. Granted with conditions.
M-78-26	41 FR 2773	Fire Creek Coal Company	30 CFR 77.1605(k)	Proposed maintenance procedures, traffic control system and safeguards for petitioner's elevated roadway considered acceptable alternative to berms or guards for road control. Granted with conditions.
M-78-80-C	41 FR 56292	Eastern Associated Coal Corp	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air-monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-109-C	41 FR 51862	Eastern Associated Coal Corp	30 CFR 75.1700	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative to leaving coal barriers around the wells. Granted with conditions.
M-78-111-C	41 FR 20811	Mountain Energy, Inc	30 CFR 77.1605(k)	Berms or guards on petitioner's elevated roadway would interfere with runoff-water drainage, especially in winter, resulting in a diminution of safety. Proposed maintenance procedures, traffic control system and safeguards considered acceptable alternative method of road control. Granted with conditions.
M-78-113-C	41 FR 55474	Consolidation Coal Co	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air-monitoring checkpoints on specified return airways considered acceptable alternative to making weekly inspections of the airways. Granted with conditions.
M-78-123-C	44 FR 19553	Tarheel Coal, Inc	30 CFR 77.213	Due to possible diminution of safety in widening substandard diameter escapeway for petitioner's draw-off tunnel, proposed inspection and training procedures and physical size limitations for persons allowed in the tunnel considered acceptable alternative to widening the escapeway to the required diameter. Granted with conditions.
M-78-124-C	43 FR 61036	Mullins and Sons	30 CFR 75.1710	Use of cabs or canopies on petitioner's scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-78-125-C	44 FR 6790	Green Tree Mining Co	30 CFR 75.1100-2	Due to lack of available water, use of fire extinguishers, rock dust and a water car considered acceptable alternative method for fire control along petitioner's belt conveyor. Granted with conditions.
M-78-126-C	44 FR 5951	Westmoreland Coal Co	30 CFR 75.1100-2	Due to freezing winter conditions which would render charged waterlines ineffective, proposed dry-line system for petitioner's belt conveyor considered acceptable alternative method of fire control. Granted with conditions.
M-78-134-C	44 FR 9439	Youghiogheny and Ohio Coal Co	30 CFR 75.1100-2	Due to freezing winter conditions which would render charged waterlines ineffective, proposed dry-line system for petitioner's belt conveyor considered acceptable alternative method of fire control. Granted with conditions.
M-78-135-C	44 FR 8370	Consolidation Coal Co	30 CFR 75.1100-1	Due to freezing winter conditions which would render charged waterlines ineffective, proposed dry-line system in petitioner's mine considered acceptable alternative method of fire control. Granted with conditions.
M-79-9-C	44 FR 14648	Alabama Fuel Co	30 CFR 75.1710	Use of cabs or canopies on petitioner's loading machine, cutting machine, shuttle cars and scoop would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-79-12-C	44 FR 16046	Lobo Coal Co	30 CFR 75.1710	Use of cabs or canopies on petitioner's roof bolting machine, scoops and cutting machine would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-79-17-C	44 FR 20811	G and A Coal Co	30 CFR 75.1710	Use of cabs or canpopies on petitioner's continuous miner, roof bolting machines and scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.

Affirmative Decisions on Petitions for Modification—Continued

Docket No.	FR notice	Petitioner	Regulation affected	Summary of findings
M-79-26-C	44 FR 18295	J and H Coal Co	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machine, roof bolting machines and scoops would result in a diminution of safety in specified low mining heights. Granted with conditions.
M-79-27-C	44 FR 33746	Action Coal Company, Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machines, roof bolting machine and scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-79-34-C	44 FR 20810	Consolidation Coal Co	30 CFR 75.1710	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative to leaving coal barriers around the wells. Granted with conditions.
M-79-42-C	44 FR 21396	Bethlehem Mines Corporation	30 CFR 75.1710	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative to leaving coal barriers around the wells. Granted with conditions.
M-79-45-C	44 FR 26221	Leeco, Inc	30 CFR 75.805	Proposed use of a micro-switch wired in series with the ground check circuit for the petitioner's electrical junction boxes considered an acceptable alternative safeguard for electrical couplers. Granted with conditions.
M-79-46-C	44 FR 26220	Cabin Knoll Coal Co	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machines, roof bolting machines and scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-79-46-C	44 FR 26220	Cabin Knoll Coal Co	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machines, roof bolting machines and scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-79-48-C	44 FR 29173	Maynard Branch Mining Co., Inc	30 CFR 75.1710	Use of cabs or canopies on petitioner's cutting machine, coal drill, roof bolting machine and scoops would result in a diminution of safety in specified low mining heights. Granted in part with conditions.
M-79-55-C	44 FR 29747	T and T Coal Co	30 CFR 75.305	Due to poor roof conditions, petitioner's proposal to establish air-monitoring checkpoints on specified return airways, considered acceptable alternative to making weekly inspection of the airways. Granted with conditions.
M-79-59-C	44 FR 26968	Consolidation Coal Co	30 CFR 75.1700	Proposed plan to plug and mine through abandoned oil and gas wells considered acceptable alternative to leaving coal barriers around the wells. Granted with conditions.
M-78-47-M	43 FR 49583	Union Carbide Corp	30 CFR 57.11-55	Proposed use of truck-mounted portable hoist with headframe and rescue torpedo in conjunction with refuge stations in petitioner's mines considered acceptable alternative emergency hoisting facility. Granted with conditions.

[FR Doc. 79-34774 Filed 11-8-79; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Meeting

The nineteenth meeting of the National Commission on Unemployment Compensation is scheduled to be held at the Shoreham Americana Hotel, Washington, D.C. The meeting will begin at 8:30 a.m. on Friday, November 30 and conclude at 5:30 p.m. on Saturday, December 1.

Agenda

Friday, November 30

1. 8:30 a.m.–12:30 p.m., Commission Discussion.
2. 12:30 p.m.–2:00 p.m., Lunch at Shoreham Hotel for Commission and Staff.
3. 2:00 p.m.–5:30 p.m., Commission Discussion.

Break (5:30 p.m.)

Saturday, December 1

4. 8:30 a.m.–12:30 p.m., Commission Discussion.
5. 12:30 p.m.–2:00 p.m., Lunch at Shoreham Hotel for Commission and Staff.
6. 2:00 p.m.–4:00 p.m., Commission Discussion.

Adjourn (4:00 p.m.)

Telephone inquiries and communications concerning this meeting should be directed to: James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, 1815 Lynn Street, Room 440, Rosslyn, Virginia 22209, (703) 235-2782.

Signed at Washington, D.C. this 31st day of October, 1979.

James M. Rosbrow,
Executive Director, National Commission on Unemployment Compensation.

[FR Doc. 79-34786 Filed 11-8-79; 8:45 am]
BILLING CODE 4510-30-M

Meeting

The twentieth meeting of the National Commission on Unemployment Compensation is scheduled to be held at the Condado Beach Hotel, San Juan, Puerto Rico. The meeting will begin at 9:00 a.m. on Thursday, December 13, and conclude at 4:00 p.m. on Sunday, December 16. The full agenda will be completed and published in the Federal Register at least two weeks prior to the meeting.

Telephone inquiries and communications concerning this meeting should be directed to: James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, 1815 Lynn Street, Room 440, Rosslyn, Virginia 22209, (703) 235-2782.

Signed at Washington, D.C. this 31st day of October, 1979.

James M. Rosbrow,

Executive Director, National Commission on Unemployment Compensation.

[FR Doc. 79-34765 Filed 11-8-79; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMUNICATIONS SYSTEM

Request for Comments on Certain Aspects of Federal Standard 1003 Telecommunications: Synchronous Bit Oriented Data Link Control Procedures (Advanced Data Communications Control Procedures)

On March 8, 1979 the General Services Administration, upon the recommendation of the Executive Agent, National Communications System, and the Office of Science and Technology Policy, Executive Office of the President, published Federal Standard 1003. This standard, developed by the Office of the Manager, National Communications System, with the advice and assistance of the Federal Telecommunication Standards Committee, is based on American National Standard X3.66-1979. It is mandatory for the acquisition of all new Federal data communication systems and equipment using synchronous bit oriented link control procedures, except in the following cases: (a) It is not mandatory if the system design was irrevocably committed to the use of other data link control procedures on or before the issue date of the standard. (b) It is also not mandatory for equipment being acquired as replacement for or extensions to existing systems which use other data link control procedures.

The primary purpose of this and all other Federal Standards in the "telecommunication" series is to insure the highest practicable degree of interoperability among major Federal telecommunication networks to enhance their utility as emergency telecommunications resources. Accordingly, Federal Standard 1003 includes certain additional requirements and exceptions not specified in the parent American National Standard. Subsequent to publication of Federal Standard 1003, the Office of the Manager, National Communications System, has received several informal inquiries regarding one of these additional requirements; i.e., paragraph 5.4 This paragraph reads as follows:

To maximize interoperability among major Federal data communication networks, while still maintaining optimum operating efficiency within such networks, all switching nodes implementing the options which are offered in this standard must also provide the capability to interoperate with terminals implementing only the basic repertoires in the unbalanced asynchronous, unbalanced normal, and balanced asynchronous classes of procedures. In terminals implementing optional functions, the additional capability to operate with no optional functions must also be provided. (This will allow any terminal, by strapping out options, to operate with any nodal switch of any federal network.

The essence of these inquires was that it might be more cost effective to achieve the required interoperability by permitting Federal agencies to acquire *only* that equipment using a *specified subset* of the optional functions and classes of procedures allowed by ANS X3.66-1979, rather than acquiring equipment optimized to their particular application but having the option strap-out capability required by paragraph 5.4. In order to assist the NCS in evaluating the relative cost effectiveness, practicality, and competitive impact of these two alternative means of achieving the required degree of interoperability, comments of interested parties in the public and private sector are hereby solicited. These comments will be considered for inclusion in subsequent revisions of Federal Standard 1003.

DATE: Coments must be received by January 7, 1980.

ADDRESS: Office of the Manger, National Communications System, Technology and Standards Office, Washington, D.C. 20305

FOR FURTHER INFORMATION CONTACT: NCS Technology and Standards Office, telephone 202-692-2124

November 6, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-34652 Filed 11-8-79; 8:45 am

BILLING CODE 3610-05-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Earth Sciences

Geology, Geochemistry and Geophysics Subcommittees; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Earth Sciences, Geology, Geochemistry and Geophysics Subcommittees.

Date and time: November 30-December 1, 1979; 9:00 a.m. to 5:00 p.m. each day.

Place: The University of California at Berkeley, Berkeley, California 94720.

Type of meeting: Closed.

Contact person: Dr. Robin Brett, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, D.C. 20550, Telephone (202) 632-4274.

Purpose of committee: To provide advice and recommendations concerning support for research in Earth Sciences.

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:

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 Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

November 6, 1979.

[FR Doc. 79-34776 Filed 11-8-79; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee on Science and Society; 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 Oversight of the Advisory Committee on Science and Society.

Date, time and place: November 30, 1979, (9:00 a.m. to 5:00 p.m., Room 651, 5225 Wisconsin Avenue, N.W., Washington, D.C. 20550.

Contact person: Marian Scheiner, Administrative Assistant, Office of Science and Society, Directorate for Science Education, National Science Foundation, Room W-651, Washington, D.C. 20550, Telephone 202-282-7770.

Type of meeting: Closed.

Purpose of subcommittee: To identify problems and priorities and to increase the effectiveness of the Office of Science and Society (OSS) and its constitutent programs.

Agenda: Closed for review and comparison of declined proposals (and supporting documentation) with successful awards under the three OSS programs, including review of peer review materials and other privileged material.

Reason for closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and priviledged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. 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 Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 79-34775 Filed 11-8-79; 8:45 am]

BILLING CODE 7555-01-M

Executive Committee of the Advisory Committee for Ocean Sciences; Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Executive Committee of the Advisory Committee for Ocean Sciences.

Date and time: November 28 and 29, 1979—9:00 a.m. to 5:00 p.m. each day.

Place: Room 642, National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. Dirk Frankenberg, Director, Division of Ocean Sciences, Room 609, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 632-5913.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 238, 1800 G Street, N.W. Washington, D.C. 20550.

Purpose of committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF's Division of Ocean Sciences.

Agenda

November 28, 9:00 a.m.

Review of Division Budget—Frankenberg.
Report on Post-IDOE program and project reviews—Gross.
National Climate Program Development: Oceanographic Input—Collins.
Other NSF programs: Integrated Basic Research; Division of Applied Research.
International Stance of OCE—Frankenberg.
Facilities Operation and Construction—Johrde.
Reassignment of RV *Alpha Helix*—Johrde.

November 28, 1:00 p.m.

Oceanography Section Oversight Review—Byrne.
Plans for Oceanographic Facilities Section Oversight Review—Dugdale.
Hydraulic Piston Coring Research Opportunities—Imbrie.

November 29, 9:00 a.m.

Role of Executive Committee in Long Range Planning—Frankenberg.
Recruitment of rotators to NSF positions: 1. Division Director, 2. Program Manager for Facilities Operations.
Advisory Committee Rotation—Dugdale.

M. Rebecca Winkler,

Committee Management Coordinator.

November 6, 1979.

[FR Doc. 79-34779 Filed 11-8-79; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Applied Physical, Mathematical, and Biological Sciences and Engineering of the Advisory Committee for Engineering and Applied Science; 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 for Applied Physical, Mathematical, and Biological Sciences and Engineering Sciences of the Advisory Committee for Engineering and Applied Science.

Date and Time: Nov. 26-27, 1979—9 a.m. to 5 p.m. each day.

Place: Room 540, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. L. Vaughn Blankenship, Director, Division of Applied Research, Room 1126, National Science Foundation, Washington, D.C. 20550. Telephone (202) 634-6260.

Purpose of Subcommittee: To provide advice and recommendations concerning support for applied research in the applied physical, mathematical, and biological sciences and engineering.

Agenda: To review and evaluate 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 Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

November 6, 1979.

[FR Doc. 79-34777 Filed 11-8-79; 8:45 am]

BILLING CODE 7555-01-M

Subcommittee for Applied Social and Behavioral Sciences of the Advisory Committee for Engineering and Applied Science; 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 for Applied Social and Behavioral Sciences of the Advisory Committee for Engineering and Applied Science.

Date and Time: Nov. 29-30, 1979—9 a.m. to 5 p.m. each day.

Place: Room 540, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. L. Vaughn Blankenship, Director, Division of Applied Research, Rm. 1126, NSF, Washington, D.C. 20550. Telephone: 202/634-6260.

Purpose of Subcommittee: To provide advice and recommendations concerning support for applied research in the social and behavioral sciences.

Agenda: To review and evaluate 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 P.L. 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

November 6, 1979.

[FR Doc. 79-34778 Filed 11-8-79; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Order Postponing Special Prehearing Conference

Before the Atomic Safety and Licensing Board; Herbert Grossman, Chairman, Dr. Oscar H. Paris, Member, Frederick J. Shon, Member, In the matter of Consumers Power Company (Big Rock Point Nuclear Plant).

October 11, 1979, the Atomic Safety and Licensing Board (the Board) designated to rule on intevention petitions and requests for hearings issued an Order setting a Special Prehearing Conference beginning at 9:30 a.m. on November 14, 1979, at the City Council Chambers, 200 Division Street, Petoskey, Michigan 49770, to consider intervention petitions, discuss specific issues that might be considered at an evidentiary hearing and determine possible future scheduling in the proceeding. The petitioners, licensee and staff had been directed to consult with each other prior to the conference in order to attempt to arrive at some agreement with regard to asserted deficiencies in the petitions and contentions to be framed by the petitioners. The Order was published on October 18, 1979 at 44 FR 60179-60180.

At the request of the parties, the Board is rescheduling the special prehearing conference to begin at 9:30 a.m. on December 5, 1979, and to continue to December 6, 1979, if necessary, at the same place originally scheduled, the City Council Chambers, 200 Division Street, Petoskey, Michigan 49770.[1]

The parties to this proceeding, or their respetive counsel are diected to attend. At the special prehearing conference the Board will consider all intervention petitions, discuss specific issues to be considered at the evidentiary hearing, and will consider a schedule for futher actions in the proceeding.

The public is invited to attend the prehearing conference.[1] Depending upon space and time limitations the Board will try to afford an opportunity for members of the public who are not parties to the proceeding to make oral limited appearance statements on the first day (December 5, 1979) of the prehearing conference including that evening, if necessary. Additional opportunities for limited appearance statements may be afforded at subsequent evidentiary hearings. Any person my request permission to make a limited appearance pursuant to provisions of 10 CFR 2.715 of the Commission's "Rules of Practice." Persons desiring to make limited appearance statements are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, giving their preferences as to the morning or evening of December 5, 1979. Written limited appearance statements may be mailed to the Secretary or presented to the Board at the special prehearing conference or at any subsequent sessions of the evidentiary hearing.

The Board requests that the staff and licensee file their respective written responses to the admissibility of intervenors' contentions, if any, no later than November 29, 1979, rather than November 8, 1979, as previously requested.

By order of the Board; The Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland this 5th day of November, 1979

Herbert Grossman,

Chairman.

[FR Doc. 79-34705 Filed 11-8-79; 8:45 am]

BILLING CODE 7590-01-M

[1] Persons attending the special prehearing conference should use the Lake Street entrance to the City Council Chambers.

Regional State Liaison Officers' Meeting

On November 28 and 29, 1979, the Nuclear Regulatory Commission will sponsor a regional meeting with the Governor-appointed State Liaison Officers from Montana, Idaho, North and South Dakota, Nebraska, Utah, Wyoming, Colorado, Kansas, New Mexico, Oklahoma, Arkansas, Louisiana and Texas to discuss mutual regulatory interest. The meeting, which will be open to the public, will be held at the Sheraton-Dallas Hotel, Southland Center, Dallas, Texas.

Questions regarding this meeting should be directed to Sue Weissberg, Office of State Programs at (301) 492-7794.

Dated at Bethesda, Maryland this 5th day of November, 1979.

For the Nuclear Regulatory Commission.

Robert G. Ryan,

Director, Office of State Programs.

[FR Doc. 79-34707 Filed 11-8-79; 8:45 am]

BILLING CODE 7590-01-M

SELECTIVE SERVICE SYSTEM

Safeguarding National Security Information

AGENCY: Selective Service System.

ACTION: Final procedures.

SUMMARY: This document provides guidance to the public in requesting access to classified information held by this agency, and the processing of requests for declassification. The document also contains procedures for safeguarding such information by this agency.

EFFECTIVE DATE: November 6, 1979.

FOR FURTHER INFORMATION CONTACT: Clarence E. Boston, Records Manager, Selective Service System, 600 E Street, NW, Washington, D.C. 20435, whose telephone number is 202-724-0419.

SUPPLEMENTARY INFORMATION: Section 5-402 of Executive Order 12065 requires that the unclassified regulations governing the handling of national security information by agencies that originate or handle classified information be published in the Federal Register.

These regulations pertain to agency management and are exempt from the requirements of 5 U.S.C. 553 and Executive Order 12044.

These regulations appear in Chapter 711—Safeguarding National Security Information—of the Administrative Services Manual which is reproduced below.

Robert E. Shuck,

Acting Director.

November 6, 1979.

Administrative Services Manual

Chapter 711 (L)—Safeguarding National Security Information

1. *Purpose.* The purpose of this chapter is to ensure that national security information generated and/or held by the Selective Service System (SSS) is protected. To ensure that such information is protected, but only to the extent and for such period as is necessary, this chapter identifies the information to be protected and prescribes certain classification, declassification and safeguarding procedures to be followed.

2. *Authority.* Executive Order 12065, National Security Information, June 28, 1978 (43 FR 289-49, July 3, 1978) (Order)

and Information Security Oversight Office Directive No. 1 (43 FR 46280, October 5, 1978). (Directive).

3. *Applicability.* This Chapter supplements E.O. 12065 within the Selective Service System with regard to national security information. It establishes general policies and certain procedures for the classification, declassification and safeguarding of information which is generated, processed and/or stored by SSS.

4. *Information Considered for Classification.*

4.1 Information may not be considered for classification unless it concerns:

Military plans, weapons, or operations;

Foreign government information;

Intelligence activities, sources or methods;

Foreign relations or foreign activities of the United States;

Scientific, technological, or economic matters relating to the national security;

Programs for safeguarding nuclear materials or facilities; or

Other categories of information which are related to national security and which require protection against unauthorized disclosures.

4.2 Even though information is determined to concern one or more of the above subjects, it may not be classified unless an original classification authority also determines its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security.

5. *Classifications.* Information may only be classified in one of the three designations listed below:

"Top Secret"—applies only to information the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

"Secret"—applies only to information the unauthorized disclosure of which reasonable could be expected to cause serious damage to the national security.

"Confidential"—applies to information the unauthorized disclosure of which reasonably could be expected to cause identifiable damage to the national security.

6. *Classification Authority.* No one in the Selective Service System is authorized to originate the classification of national security information.

7. *Derivative Classification Authority.*

7.1 Only the Security Control Officer and Top Secret Control Officers are authorized to determine the need for and the level of classification markings derived from source material or as directed by a classification guide to apply these markings whenever the Selective Service System generates in new form information that is already classified.

7.2 Derivative classification incorporates (1) the determination that information is, in substance, the same as information currently classified and (2) the designation of the level of classification.

8. *Declassification or Downgrading Classification Authority.*

8.1 No one in the Selective Service System is authorized to declassify or downgrade classified information prior to the date scheduled by its originator.

8.2 Classified information that is marked for automatic downgrading is downgraded accordingly without notification to holders.

8.3 Classified information or material in the custody of the Selective Service System shall be reviewed on a systematic basis by the TOP SECRET Control Officers and/or the Security Control Officer so that the prescribed downgrading, declassification, transfer, retirement or destruction may be accomplished at the earliest practicable date.

8.4 Other agency classified documents, provided the Selective Service System for information and reference purposes, will be destroyed or returned to the originating agency by the TOP SECRET Control Officers when cyclical dates are received or the documents are no longer needed.

8.5 When classified documents are destroyed by burning or pulping, a record of destruction will be maintained by TOP SECRET Control Officers by noting the date of destruction and lining through the entry in the classified log.

9. *Policies.*

9.1 No person shall be given access to classified information or material unless such person has been determined to be trustworthy and unless access to such information is necessary for the performance of his official duties.

9.2 All classified information and material shall be appropriately and conspicuously marked to put all persons on clear notice that its contents are classified.

9.3 Classified information and material shall be used, processed, stored, reproduced and transmitted only under conditions which will prevent access by or dissemination to unauthorized persons.

9.4 Appropriate accountability records for classified information shall be established and maintained.

9.5 Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition.

9.6 No person is entitled to knowledge or possession of classified national security information or material solely because of his office, position or type of clearance. The degree of access and the information or material to be made available are based on their necessity for the performance of official duties.

10. *Responsibilities Within the Selective Service System.*

10.1 *Director.* The Director is responsible for safeguarding national security information and material within the Selective Service System. To assist him in the performance of his responsibility, the Director delegates authority to implement the provisions of this Chapter to the following: (a) Security Control Officer, (b) Personnel Security Officer, (c) Assistant Personnel Security Officer(s), (d) TOP SECRET Control Officer for National Headquarters and (e) those individuals who may be designated TOP SECRET Control Officers in their areas of responsibility.

10.2 *Security Control Officer.* The duties prescribed for the Security Control Officer include, but are not limited to, the following:

Establish and conduct an active oversight program.

Establish and chair an agency committee with authority to act on all suggestions and complaints with respect to the agency's administration of the information security program.

Establish and conduct a training program for all Selective Service System personnel who have access to classified information.

Review annually the procedures for safeguarding information eliminating those which are duplicative or unnecessary.

Personally perform annually a physical inventory of all classified information or materials stored at National Headquarters.

Insure that a list of all Selective Service System personnel with security clearances is current and available.

Submit required reports to the Information Security Oversight Committee.

Determine and/or review the need for and the level of derivative classifications.

10.3 *Personnel Security Officer.* The Personnel Security Officer is responsible for performing those actions outlined in Chapter 732, MPPM.

10.4 *Top Secret Control Officers.* Within their areas of responsibility TOP SECRET Control Officers are responsible for:

Safeguarding the receipt, storage, distribution, transmission and disposal of national security information in

accordance with the provisions of this chapter.

Maintaining current access and accountability records and conducting a physical inventory at least once a year.

Determining the need for and level of derivative classifications.

11. *Access to National Security Information or Materials by SSS Employees.*

11.1 The clearance of a military officer or civilian employee of the Selective Service System for access to classified national security information is the responsibility of the Director and may be delegated to the Personnel Security Officer.

11.2 The Director, after proper verification and review of security investigations, will issue a Certificate of Clearance (SSS Form 490) to those civilian and military employees whom he determines must have access to classified information in order to accomplish their official government duties. The certificates will be for specified periods of time, the duration of a project or while occupying a particular position.

11.3 Access to classified information within the Selective Service System will be granted only after the completion of a Certificate of Clearance (SSS Form 490) identifying the highest classification access authorization.

11.4 Chapter 732 of the Manpower Policies and Procedures Manual contains the security requirements for both the civilian and military employees of the Selective Service System. A facsimile and procedural directive of SSS Form 490 are included in that Chapter.

12. *Access by Historical Researchers and Former Presidential Appointees.*

12.1 The Director of Selective Service may grant access to classified information within the jurisdiction of the Selective Service System to persons who are engaged in historical research projects, or previously have occupied policy-making positions to which they were appointed by the President.

12.2 Access by historical researchers and former Presidential appointees may be granted only after the Selective Service System has:

Made a written determination that access is consistent with the interests of national security;

Taken appropriate steps to ensure access is limited to specific categories of information over which that agency has classification jurisdiction;

Limited the access granted to former Presidential appointees to items the person originated, reviewed, signed or received while serving as a Presidential appointee.

Made a determination of the requestor's trustworthiness.

12.3 The Selective Service System will obtain written agreements from the requestors to safeguard the information to which they are given access. Written consent must be given to the Selective Service System's review of their notes and manuscripts for the purpose of determining no classified information is contained therein.

2.4 If access requested by historical and former Presidential appointees requires the rendering of services for which fees may be charged, the requestor will be notified that fees will be imposed in accordance with 32 CFR 1608.22.

13. *Accountability for National Security Information or Material.*

13.1 *Control Log.* TOP SECRET Control Officers will maintain a current log of all TOP SECRET, SECRET and CONFIDENTIAL information or material.

This log will contain, as a minimum, the following entries:

Control or file number of each classified item;

Date received;

Classification;

Number of copies;

Non-classified description of item;

Orginating agency;

Date of origin;

Routed to;

Under remarks, when applicable, any disposition information, including the name, address and title of person to whom transferred and/or certificate of destruction.

13.2 *Review and Inventory.*

13.2.1 Top Secret Control Officers will review and inventory all Top secret and Secret material at least annually. A copy of the inventory showing name and title of the person taking the inventory, the date the inventory was taken, and the status of all TOP SECRET and SECRET items will be filed with the current log and be available to the Security Control Officer upon request.

13.2.2 The Security Control Officer will conduct a physical inventory of all classified materials in National Headquarters at least annually.

13.3 *Reproduction Controls.*

13.3.1 Top Secret documents may not be reproduced by Selective Service System personnel without the written consent of the originating agency unless otherwise marked by the originating office.

13.3.2 Secret and Confidential documents may be reproduced by Selective Service System personnel only if the originating agency imposed no reproduction limitations, and if written consent of the appropriate Top Secret Control Officer or the Security Control Officer, is secured before the reproduction of any classified documents.

13.3.3 Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

13.3.4 Records will be maintained by the Top Secret Control Officers of all copies of classified documents to show number and distribution.

14. *Transmission of National Security Information or Material.*

14.1 *Preparation and Receipting.* Classified information and material shall be enclosed in opaque inner and outer covers before transmitting. The outer cover shall be sealed and addressed with no indication of the classification of its contents. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and address. A receipt for Top Secret and Secret information shall be attached to or enclosed in the inner cover. Confidential information shall require a receipt only if the sender deems it necessary. When a receipt is required, it will be signed by the recipient and returned to the sender.

14.2 *Transmittal of Top Secret.* The transmission of Top Secret information and material shall be effected preferably by person to person discussions between the officials concerned. Otherwise, the transmission of Top Secret information and material shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system especially created for that purpose, over authorized communications circuits in encrypted form, or by other means authorized by the National Security Council. Under no circumstances will Top Secret materials or information be transmitted by mail.

14.3 *Transmittal of Secret.*

14.3.1 Secret information and material may be transmitted within and between the forty-eight contiguous states and the District of Columbia, or wholly within the State of Hawaii, the State of Alaska, or the Commonwealth of Puerto Rico by one of the means authorized for Top Secret information and material or by use of the United States Postal Service registered mail with registered mail receipt.

14.3.2 Secret information and material may be transmitted between United States Government installations in the forty-eight contiguous states, Alaska, the District of Columbia and Canada by United States and Canadian registered mail with registered mail receipt.

14.4 *Transmittal of Confidential.* Confidential information and material shall be transmitted within the forty-eight contiguous states and the District of Columbia, or wholly within Alaska, Hawaii, the Commonwealth of Puerto Rico, or a United States possession, by one of the means established for higher classifications, or by certified or first class mail. Outside these areas, Confidential information and material shall be transmitted in the same manner as authorized for higher classifications.

14.5 *Telecommunications Conversations.* Classified information shall not be revealed in telecommunications conversations, except as may be authorized with respect to the transmission of classified information over approved communications circuits or systems, as specified in par 14.2, above.

15. *Safeguarding Classified Information or Material.*

15.1 *Storage of Top Secret.* Top Secret information and material shall be stored in a safe or safe-type steel file container having a built in three position dial-type combination lock, vault, or vault-type room, or other storage facility which meets the General Services Administration standards for Top Secret (as published in the Federal Supply Schedule) and which minimizes the possibility of unauthorized access to, or the physical theft of, such information or material.

15.2 *Storage of Secret or Confidential*

15.2.1 Secret and Confidential material may be stored in a manner authorized for Top Secret information, or in a container or vault which meets the Gerneral Services Administration standards for Secret or Confidential.

15.2.2 Secret and Confidential material may also be stored in steel filing cabinets having a built in, three position, dial-type combination lock; or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a GSA approved changeable combination padlock.

15.3 *Combinations.* Top Secret Control Officers will insure that combinations to security equipment and devices are changed only by persons having appropriate security clearance and are changed whenver such equipment is placed in use, whenver a person knowing the combination is transferred from the office to which the equipment is assigned, whenver a combination has been subjected to possible compromise, and at least once every year.

Knowledge of combinations shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest category of classified information or material authorized for storage in the security equipment concerned.

16. *Mandatory Review of Classification.*

16.1 Requests for mandatory review for declassification under Section 3-501 of Executive Order 12065 must be in writing and should be addressed to: Security Control Officer, National Headquarters, Selective Service System, Washington, D.C. 20435.

16.2 The requestor shall be informed of the date of receipt of the request at Selective Service System. This date will be the basis for the time limits specified by Section 3-501 of the Executvie Order. If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

16.3 When Selective Service System receives a request for information in a document which is in its custody, but which was classified by another agency, it shall refer the request to the appropriate agency for review, together with a copy of the document containing the information requested, where practicable. Selective Service System shall also notify the requestor of the referral, unless the association of the reviewing agency with the information requires protection. The reviewing agency shall review a document in coordination with any other agency involved with the classification or having a direct interest in the subject matter. The reviewing agency shall respond directly to the requestor in accordance with the pertinent procedures described above and, if requested, shall notify Selective Service System of its determination.

17. *Administrative Sanctions.*

17.1 All Selective Service System personnel are subject to appropriate administrative sanctions if they knowingly and willfully:

Classify information in violation of this Chapter:

Disclose through negligence properly classified information or compromise properly classified information without authorization, or

Violate any other provision of this Chapter.

17.2 Sanctions may include reprimand, suspension without pay, removal, termination of classification authority or other sanction in accordance with applicable law and agency regulations.

17.3 The Director shall ensure that appropriate and prompt corrective action is taken whenever a violation occurs and will notify the Director of the Information Security-Oversight Office, General Services Administration, of such violations.

17.4 The Director will report to the Attorney General any possible violations of Federal criminal laws by Selective Service System personnel or any other person in handling national security information.

[FR Doc. 79-34965 Filed 11-8-79; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[TMK-2-R:E:E]

Xylogics, Inc.; Application for Recordation of Trade Name

Application has been filed pursuant to § 133.12 Customs Regulations (19 CFR 133.12), for recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124) of the trade name Xylogics, Inc. used by Xylogics, Inc. a corporation organized under the laws of the State of Massachusetts, located at 42 Third Avenue, Burlington, Massachusetts 01803.

The application states that the trade name is applied to electronic data processing equipment, including central processing units, memory devices, controllers, interfaces and tape drives, disc drives, terminals and other peripheral input and output equipment; and computer programs in printed form and in the form of magnetic tapes, magnetic discs and read-only semiconductor memories manufactured in England and the United States. Zylogics International, Ltd., Lyton House, Mill Lane, Gerrards Cross, Bucks SL98AY, Great Britain is authorized to use the trade name.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Washington, D.C. 20229, in time to be received not later than December 10, 1979.

Notice of the action taken on the application for recordation of the trade name will be published in the Federal Register.

Dated: November 5, 1979.

Donald W. Lewis,

Director, Office of Regulations and Rulings.

[FR Doc. 79-34708 Filed 11-8-79; 8:45 am]

BILLING CODE 4810-22-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on November 26 and 27, 1979, in Room 33313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, N.W., Washington, D.C. The meeting will begin at 10:00 a.m. on November 26 and 9:00 a.m. on November 27. The agenda will include the following topics:

Monday, November 26, 1979

Overview of IRS
Problem Resolution Program
Uniform Application of Preparer Penalties
Single Level of Appeal
"Estimates of Income Unreported on Individual Tax Returns" Report and IRS responses

Tuesday, November 27, 1979

W-4 Program
Procedures for Requesting Rulings Rev. Proc. 79-45
Tax Shelter Program
Role of the Advisory Group, and Procedures for Future Meetings

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. After the Committee members finish discussing the items on the agenda, there may be time for statements by non-members. If you want to make a statement at the meeting, or if you would like the Committee to consider a written statement, please call or write to Lauralee A. Matthews, Assistant to the Commissioner, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Jerome Kurtz,

Commissioner.

November 7, 1979.

[FR Doc. 79-34868 Filed 11-8-79; 8:45 am]

BILLING CODE 4830-01-M

Commissioner's Advisory Group; Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776, 5 U.S.C. App. I, Supp. II), and with the approval of the Secretary of the Treasury and the concurrence of the Office of Management and Budget, the Office of the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title: The Advisory Group to the Commissioner of Internal Revenue.

Purpose: The primary purpose of the Advisory Group is to provide an organized public forum for discussions of relevant tax administration issues between officials of IRS and representatives of the public. The Advisory Group also offers constructive observations about IRS' current or proposed policies, programs, and procedures and, where necessary, suggests ways to improve IRS' operations.

The Commissioner and other senior officials receive from the Advisory Group a significant amount of information about the problem taxpayers encounter not only in dealing with IRS but also in meeting obligations imposed on them statutorily. The Service uses the advice of the Advisory Group to develop a tax administration system which reflects the simplest, most equitable approach to administering the tax system that it is within our power to pursue. Accordingly, the Advisory Group conveys to the Service the public's perceptions of IRS activities.

Termination Date: The services of the Group are expected to be needed for an indefinite period of time. No termination date has been established which is less than two years from the date the Advisory Group's charter is approved. The Advisory Group's charter is approved by signature of the Assistant Secretary of the Treasury for Administration.

Jerome Kurtz,

Commissioner.

[FR Doc. 79-34867 Filed 11-8-79; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Administrator's Education and Rehabilitation Advisory Committee; Meeting

The Veterans Administration gives notice that a meeting of the Administrator's Education and Rehabilitation Advisory Committee, authorized by section 1792, title 38, United States Code, will be held at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, on December 5, 1979, at 9 a.m. The meeting will be for the purpose of reviewing provisions of parts of the VA vocational and education programs, acting on recommendations of subcommittees assigned to these program areas, and making appropriate full committee recommendations thereon.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity and the need for building security, it will be necessary for those wishing to attend to contact Mr. C. L. Dollarhide, Deputy Director, Education and Rehabilitation Service, Veterans Administration Central Office (phone 202-389-2152), prior to November 28.

Interested persons may attend, appear before, or file statements with the committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 2:30 p.m. on December 5, 1979.

Dated: November 5, 1979.

By Director of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 79-34704 Filed 11-8-79; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

Availability of Commission Releases

Effective November 13, 1979, Commission releases will be regularly available once daily at 12:30 p.m., in Room 2229 of the Secretary's Office. Any decision released after 12:30 p.m. will be posted on the Secretary's Bulletin Board and made available in Room 2229 until 5:00 p.m. These late releases will be placed in the press boxes for regular pickup the following day.

Also commencing November 13, 1979, significant case decisions will be available nationwide through the use of a dedicated Code-A-Phone. Interested parties will be able to call in and obtain a recorded excerpt of significant Commission decisions (including late decisions) on a daily basis. To receive a copy of the decisions, callers from outside the Washington metropolitan area will be advised to dial a second number and leave their name, address, the relevant docket number, etc. Local callers will be advised that copies may be obtained from the Secretary's Office, Room 2229.

The user information will be transcribed the next business day and the order will be filled promptly.

The Code-A-Phone numbers are: Outside Washington metropolitan area:

800-424-5230; and Local Washington metropolitan area: 275-0895.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-34653 Filed 11-8-79; 8:45 am]

BILLING CODE 7035-01-M

[Rule 19, Ex Parte No. 241; Rev. Exemption No. 143, Amdt. 3]

Exemption Under Provisions of Mandatory Car Service Rules

Upon further consideration of Revised Exemption No. 143 issued January 24, 1979.

It is ordered, That, under authority vested in me by Car Service Rule 19, Revised Exemption No. 143 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to expire January 31, 1980

This amendment shall become effective October 31, 1979.

Issued at Washington, D.C., October 25, 1979

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-34657 Filed 11-8-79; 8:45 am]

BILLING CODE 7035-01-M

[Directed Service Order No. 1398]

Kansas City Terminal Railway Co. Directed to Operate Over Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee); Authorization Order No. 8

Decided: November 1, 1979.

On September 26, 1979, the Commission directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. 11125 over the lines of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). *See* Directed Service Order No. 1398, *Kansas City Term. Ry. Co.—Operate—Chicago, R. I. & P.,* 360 I.C.C. 289 (1979) and 44 FR 56343 (October 1, 1979).

A large percentage of RI tracks are in need of rehabilitation. DSO No. 1398 required the KCT to inspect the line and related facilities prior to commencing service over any line. *See* DSO No. 1398, at page 16 (44 FR 56346, 1st & 2nd columns). The DRC was authorized to perform "minor" rehabilitation to RI lines, right-of-way, roadway structures and related facilities. DSO No. 1398 described "minor" rehabilitation as work which: (1) Would cost less than $5,000 per mile; (2) can be initiated within 30 days of the effective date of this order; and (3) can be completed within 15 days. Any rehabilitation work which does meet these standards shall be deemed "substantial" rehabilitation requiring prior Commission approval. See *DSO* No. 1398, at page 24 (44 FR 56348, 1st column).

The DRC submitted a list of work proposed on two segments of RI lines which exceeds $5,000 per mile. The two track segments involved in this request are from Allerton to Des Moines, IA, and from Lock Springs to Polo, MO. *See* "DRC Report No. 6."

The DRC seeks Commission authorization to repair these RI lines on the following grounds: (1) The work is routine rehabilitation which is required to bring the track into compliance with FRA Track Safety Standards for Class I track and back into full service; (2) FRA granted a limited waiver for these two track segments but imposed severe operating restrictions; and (3) these operation restrictions impose operating difficulties and increase the expense of directed-service.

The cost of materials and labor for rehabilitation of these lines varies from $5,010 to $18,574 per mile, or an average of $7,601 per mile. The total cost of rehabilitation is approximately $750,000.

We find: 1. This action will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108 (1978).

It is ordered, 1. The DRC is authorized to perform "substantial" rehabilitation of these RI tracks at the maximum cost listed for each mile:

Track Rehabilitation Over $5,000 Per Mile; Allerton to Des Moines—MP 0 to MP 73.5

[Cost per mile]

Mile	Labor Cost	Material Cost	Total Cost
0	$6,378	$6,758	$13,136
1	4,145	4,415	8,560
2	3,967	4,229	8,196
3	4,589	5,871	10,460
4	2,968	3,542	6,910
5	3,574	4,476	8,050
6	4,526	5,474	10,000
8	3,764	5,006	8,770
9	3,523	3,763	7,286
10	4,081	4,349	8,430
11	2,711	2,911	5,622
12	3,955	5,535	9,490
13	3,840	4,756	8,596
14	3,510	7,050	10,560
15	2,673	2,871	5,544
16	3,891	4,809	8,700
17	2,559	2,751	5,310
18	3,130	4,340	7,470
19	3,891	5,469	9,360
23	2,178	3,012	5,190
24	2,939	3,811	6,750
28	2,876	3,084	5,960
29	2,622	2,818	5,440
30	3,003	5,197	8,200
31	1,250	3,960	5,210
32	1,250	3,960	5,210
33	1,250	3,960	5,210
34	1,250	3,960	5,210
35	1,250	3,960	5,210
36	3,510	4,410	7,920
37	2,432	3,278	5,710

Track Rehabilitation Over $5,000 Per Mile; Allerton to Des Moines—MP 0 to MP 73.5—Continued

[Cost per mile]

Mile	Labor Cost	Material Cost	Total Cost
38	2,686	4,204	6,890
39	2,305	3,145	5,450
40	2,749	3,611	6,360
41	3,510	4,740	8,250
42	3,003	4,537	7,540
43	2,241	3,739	5,980
44	2,749	4,271	7,020
46	2,812	3,348	6,160
47	1,607	3,403	5,010
49	2,749	3,611	6,360
50	2,622	3,148	5,770
51	3,383	4,277	7,660
53	3,003	5,197	8,200
54	3,257	3,483	6,740
56	2,749	3,611	6,360
57	3,510	5,070	8,580
58	3,383	4,607	7,990
59	3,257	4,803	8,060
60	3,447	4,343	7,790
61	3,320	3,550	6,870
62	2,144	2,946	5,060
65	3,003	3,217	6,220
66	3,257	3,483	6,740
67	3,510	4,740	8,250
68	1,480	4,920	6,400
69	1,480	4,920	6,400
70	1,480	4,920	6,400
71	1,480	4,920	6,400
72	1,480	4,920	6,400
Total	174,511	253,469	427,980

Track Rehabilitation Over $5,000 per mile; Lock Springs to Polo—MP 434.8 to MP 460.5

[Cost per mile]

Mile	Labor Cost	Material Cost	Total Cost
435	4,348	$6,608	$10,956
436	4,297	6,555	10,852
437	5,515	7,833	13,348
438	5,592	7,912	13,504
439	4,627	6,901	11,528
440	3,739	5,969	9,708
441	2,140	4,292	6,432
442	8,066	10,508	18,574
443	2,432	4,598	7,030
444	7,254	9,656	16,910
445	6,328	8,684	15,012
446	4,627	6,901	11,528
447	4,602	6,874	11,476
448	4,779	7,061	11,840
449	5,592	7,912	13,504
450	6,315	8,671	14,986
451	5,833	8,165	13,998
452	6,721	9,097	15,818
453	6,886	9,270	16,156
454	5,757	8,085	13,842
455	4,944	7,234	12,178
456	5,744	8,072	13,816
457	6,480	8,844	15,324
458	6,645	9,017	15,662
459	5,274	7,580	12,854
Total	134,537	192,299	326,836

Grand total of both segments is $754,816.

2. The DRC is directed to offset the cost of the foregoing rehabilitation (*i.e.,* $754, 816) against monies it owes the RI Trustee for rentals on RI locomotives, freight cars and other equipment. By offsetting these two amounts, we preclude unjust enrichment of the RI creditors.

3. This decision shall be effective on its service date.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham,

Clapp, Christian, Trantum, Gaskins and Alexis. Commissioners Gresham and Trantum did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-34655 Filed 11-8-79; 8:45 am]

BILLING CODE 7035-01-M

[Directed Service Order No. 1398]

Kansas City Terminal Railway Co. Directed To Operate Over Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee); Supplemental Order No. 10

Decided: November 2, 1979.

On September 26, 1979, the Commission directed Kansas City Terminal Railway Company (KCT) to provide service as a directed rail carrier (DRC) under 49 U.S.C. 11125 over the lines of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("RI"). See *Kansas City Term. Ry. Co.—Operate—Chicago, R. I. & P.*, 360 I.C.C. 289 (1979), 44 FR 56343 (October 1, 1979).

This Supplemental Order is being issued to clarify the issue of contracting-out minor track work where there are not sufficient qualified RI employees to perform that work.

Under the section of DSO No. 1398 entitled "Hiring of RI Employees—Rosters," we established a three-level general approach to hiring. *See* DSO No. 1398, 360 I.C.C. at 302 (44 FR 56347, 1st and 2nd columns] was required first to offer available jobs to RI employees in the appropriate crafts or seniority districts. If there were an inadequate number of such employees, the DRC would offer the jobs to RI employees in other seniority districts or crafts. Finally, if there were an insufficient number of RI employees qualified, willing or able to fill particular positions, the DRC could contract-out for the performance of those tasks or, alternatively, provide personnel from its own labor force as if under contract with the directed operation. (Such contracted employees would not be considered "RI employees" for directed-service or other purposes and thus were not to be added to RI employment rosters.)

However, in the section of the decision dealing with "minor" rehabilitation to RI lines and related facilities, we imposed an unqualified ban on contracting-out. *See* DSO No. 1398, 360 I.C.C. at 304 (44 FR 56348, 1st & 2nd columns). This was motivated by our belief that such track work could adequately be performed by existing RI maintenance-of-way (or other RI) employees, and by our desire to deter the performance of excessive minor track work unnecessary to the provision of directed service.

Since the time DSO No. 1398 was issued, certain problems have developed which cause us to believe we should modify our treatment of contracting-out in the area of minor track work.

In a telegram from KCT (filed October 29, 1979), the DRC informs us that it is critically short of maintenance-of-way forces to perform normal inspection and maintenance work to track. Unless it is authorized to hire temporary maintenance-of-way employees, the DRC believes it will not be able to perform adequate directed-service operations.

The shortage of RI employees to perform this maintenance work results from the unexpected failure of approximately 174 RI maintenance-of-way employees to return to work following the institution of directed service. In addition, the DRC informs us that there are no extra RI workers in other departments available to perform the requisite maintenance work. Accordingly, the DRC requests authority "to hire new temporary employees for the maintenance-of-way department for not to exceed 59 days, to bring the work force to the pre-directed service level of 1,385 employees."

Moreover, in accordance with our general contracting-out provisions, *supra*, 360 I.C.C. at 302 (44 FR 56347, 1st & 2nd columns), these temporaries shall not be considered permanent "RI employees" for directed-service or any other purposes and thus may not be added to RI employment rosters.

We find: 1. This action will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108 (1978).

It is ordered: 1. DSO No. 1398's prohibition against contracting-out minor track work, *supra*, 360 I.C.C. at 304 (44 FR 56348, 1st & 2nd columns) is modified as indicated above.

2. This decision shall be effective on its service date.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis; Commissioners Gresham and Trantum did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-34654 Filed 11-8-79; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-64; General Temporary Order No. 20]

Temporary Authority To Transport Meat Packer Commodities

Decided: October 29, 1979.

With the approach of winter weather and the possible interruption in getting meats and related products to markets as experienced in prior years, the meat packing industry expresses grave concern that the available fleet of refrigerator equipment is inadequate to meet average demands. Past experience also disclosed a significant shortfall of refrigerator equipment as a result of owner-operator dropouts and inadequacies to cope with severe weather conditions.

In view of the cited conditions and the unique characteristics of the meat packing industry, the Commission is taking action to enable motor carriers to obtain immediate temporary authority in lieu of the normal practice in handling requests for emergency temporary authority.

It is ordered: Pursuant to 49 U.S.C. 10928, all persons who shall apply to any regional operations director, assistant regional operations director, district supervisor, or their designee of the Commission's Bureau of Operations are granted temporary authority to transport the full range of meat packer commodities, i.e., meat, meat products, meat by-products, and related products distributed by meat packing houses, in interstate or foreign commerce, by motor vehicle for periods up to 30 days to the extent and scope that any of the designated officials certify that there is an immediate and urgent need for service.

In view of the unpredictable winter weather conditions and related chronic shortages of refrigerator equipment, the need is projected to continue during the period commencing November 5, 1979 and ending March 31, 1980.

This grant of temporary authority is conditioned upon compliance with applicable requirements concerning tariff and schedule publications, evidence of security for the protection of the public and designation of agents for service of process, and further conditioned upon such tariffs and schedules quoting rates, and charges no lower than those of existing rail, water, or motor carriers in the territory in which the operations are to be authorized.

Temporary authority granted pursuant to this order shall expire on March 31, 1980, except as to shipments of meat packing house commodities, the

transportation of which began prior to that time.

This order shall become effective November 5, 1979.

Notice of this order shall be given to motor carriers, rail carriers, other parties of interest, and to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-34656 Filed 11-8-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 2917]

Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; Submissions Under Section 6 of the Milwaukee Railroad Restructuring Act

AGENCY: Interstate Commerce Commission.

ACTION: Procedure to govern submissions under section 6 of the Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101.

SUMMARY: The Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101, provides, *inter alia,* an opportunity for certain organizations to convert all or a substantial part of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company MILW] into an employee or employee-shipper owned company. The act requires submission of a plan to the Commission, which must approve the proposal within 30 days if it finds the plan feasible. The Commission has esablished a procedure to govern submission of plans under Public Law No. 96-101.

DATES: This decision shall be effective on the November 8, 1979.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202-275-7245.

SUPPLEMENTARY INFORMATION: Section 6 of the recently-enacted Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101, provides that no later than December 1, 1979, an association composed of representatives of national railway labor organizations, employee coalitions, and shippers (or any combination of these) may submit to use a single plan to convert all or a substantial part of the MILW into an employee or employee-shipper owned company, and a method for implementing the plan. The plan must include a comprehensive evaluation of the MILW's prospects for financial self-sustainability. The legislation further provides that within 30 days of submission of such a plan we must approve the proposal if we find the plan feasible. Our finding respecting feasibility mst be made pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. section 554.

The time constraints imposed by Public Law No. 96-101 require us to implement immediately a procedure to govern submissions under that act.

To facilitate the processing of the anticipated filings, we request that by November 20, 1979, persons expecting to submit a plan give notice of their intent to the Commission; the governor, public service commission, and designated state agency in each state in which the MILW operates; the Trustee of the MILW; the Railway Labor Executives' Association, as agent for organizations representing MILW employees; and representatives of creditors and shareholders of the MILW. Notice of intent may be given by first class mail.

Each plan submitted under section 6 of Pub. L. No. 96-101 shall include a proposed notice of filing for publication in the Federal Register. The draft notice shall contain a brief summary of the proposal, including the name and address of the applicant and he applicant's attorney; the nature of the plan and a listing of its participants; and a brief geographical description of the portions of the MILW embraced by the plan. Each plan shall also include all supporting studies and other information upon which the applicant intends to rely.

We shall consider all plans filed prior to or on December 1, 1979, as submitted as of that date. Initial statements in support of or in opposition to submitted plans shall be filed no later than December 14, 1979. Replies to initial statements shall be filed no later than December 20, 1979. The determination on feasibility shall be made by the entire Commission no later than December 31, 1979.

In our order of August 22, 1979, in Finance Docket No. 29078, *Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Request for Expedited Handling of Abandonment,* and Docket No. AB-7 (Sub-No. 86) *Stanley E. G. Hillman, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Abandonment—Portions of Pacific Coast Extension in Montana, Idaho, Washington, and Oregon,* we indicated our intention to consider all evidence presented in MILW abandonment proceedings in our evaluation of the Trustee's and any competing reorganization plans. The evidentiary proceeding in Docket No. AB-7 (Sub-No. 86) has concluded, and we intend to use the information contained in that record in preparing to assess the feasibility of plans submitted under section 6 of Public Law No. 96-101. We recognize that most, if not all, of the studies and other data presented in Docket No. AB-7 (Sub-No. 86) are not directly pertinent to the issue of a particular plan's feasibility, but the record contains invaluable background material which should not be cast aside.

The provisions of the National Environmental Policy Act of 1969 do not apply to transactions carried out pursuant to the Milwaukee Railroad Restructuring Act.

It is ordered: Plans submitted under section 6 of the Milwaukee Railroad Restructuring Act, Public Law No. 96-101, shall be governed by the procedure established in this decision.

This decision shall be served upon the United States Department of Transportation; the governors of the states of Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wisconsin; the public service commission and designated state rail agency in each of those states; Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; the Railway Labor Executives' Association, as agent for organizations representing MILW employees; the Association to Save Our Railroad Employment; New Milwaukee Lines; the Office of Rail Public Counsel; and representatives of creditors and shareholders of the MILW. Notice shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register.

Decided: November 7, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis. Commissioner Gresham did not participate in the disposition of this proceeding.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-34697 Filed 11-8-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 219
Friday, November 9, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1, 2
Equal Employment Opportunity Commission	3
Federal Election Commission	4
Federal Home Loan Bank Board	5
Federal Maritime Commission	6
Federal Reserve System	7, 8
International Trade Commission	9
Merit Systems Protection Board	10
National Consumer Cooperative Bank	11
Railroad Retirement Board	12
Securities and Exchange Commission	13

1

[M-254, Amdt. 2; Nov. 2, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the November 7, 1979, meeting agenda.

TIME AND DATE: 2:30 p.m., November 7, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

10a. Docket 36499 *(Denver/Chicago-Florida Show-Cause Proceeding)*, Docket 36640 (Republic), Docket 36642 (Delta), Docket 36649 (National), Docket 36650 (Evergreen), Docket 36653 (American), Docket 36654 (USAir), Docket 36656 (Eastern), Docket 36657 (Pan American), Docket 36699 (Trans CArib), Docket 36705 (Northwest); applications for Denver/Chicago-Florida authority. (Memo 8974-B, BDA)

13a. Dockets 36971 and 36811; Sixty Day Notice of Air New England for suspension of nonstop or single plane service in eight markets; application of Air New England for an exemption from the notice requirement. (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: United Air Lines plans to begin service in these markets in December. Therefore, the Board should consider the order granting the authority as soon as possible. Due to processing delays in Bureau of Domestic Aviation, Item 13a was not submitted before the deadline for the November 7, 1979 meeting agenda. The draft order concerns Air New England's suspension of nonstop or single-plane service in eight markets and request for exemption from Section 401(j)(2). The Board's immediate consideration of this matter is necessary in order to determine the consequences of Air New England's action. Accordingly, the following Members have voted that Items 10a and 13a be added to the November 7, 1979 agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2192-79 Filed 11-7-79; 9:12 am]

BILLING CODE 6320-01-M

2

[M-253, Amdt. 5; Nov. 2, 1979]

CIVIL AERONAUTICS BOARD.

Notice of Addition of item to the November 1, 1979, meeting.

TIME AND DATE: 9:30 a.m., November 1, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 1a. American Airlines' peak period passenger fare surcharge in overseas and foreign Caribbean markets (For Information Memo dated October 29, 1979).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Because of the need for discussion by Board Members, it was necessary to place this item on the November 1, agenda. Accordingly, the following Members voted that Item 1a be added to the November 1, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-2193-79 Filed 11-7-79; 9:12 am]

BILLING CODE 6320-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (Eastern Time), Tuesday, November 13, 1979.

PLACE: Commission Conference Room 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

Open to the Public

1. Freedom of Information Act Appeal No. 79-8-FOIA-287, concerning a request by an individual for EEO-1 and EEO-6 reports filed with the Commission for the years 1973 to 1979, by 8 medical centers.
2. Several proposed sole source contracts for services in support of litigation.
3. Proposed questionnaire requesting information on the impact of Federal employment opportunity programs and activities, to be sent to employers.
4. Interim report on the Pilot Project. (Fed. Employee Complaints)
5. Proposed Back Pay Regulations.
6. Interim report on Federal EEO programs.
7. Revision to Handicap Regulations.
8. A proposed change to EEOC order 110, involving revised mission and function statements for the Office of Systemic programs and the Office of the General Counsel.
9. Report on Commission Operations by the Executive Director.

Closed to the Public

Litigation authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued November 6, 1979.

[S-2202-79 Filed 11-7-79; 3:52 pm

BILLING CODE 6570-06-M

4

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, November 14, 1979, at 10:00 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance, Personnel, Labor/Management Relations.

DATE AND TIME: Thursday, November 15, 1979, at 10:00 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.
Correction and approval of minutes.
Certification.
Audit Advisory Panel.
Complaints based on news articles.
1980 elections and related matters.
Presidential Monthly Status Report.
Budget Execution Report.
Appropriations and Budget.
Pending legislation.
Classification actions.
Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer, telephone 202-523-4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S-2203-79 Filed 11-7-79; 3:52 pm]

BILLING CODE 6715-01-M

5

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44 FR 63001, November 1, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., November 8, 1979.

PLACE: 1700 G Street, N.W., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the agenda for the open meeting:

Application for Extension of Subscription Offering Period—Land of Lincoln Savings & Loan Association, Berwyn, Illinois.

Post-Approval Amendment to the Application for Permission to Convert From Mutual to Stock Form—Haven Federal Savings & Loan Association, Winter Haven Florida.

Post-Approval Amendment to the Application for Permission to Convert From Mutual to Stock Form—Home Federal Savings & Loan Association of Palm Beach, Palm Beach, Florida.

The following item has been removed from the agenda for the open meeting:

Resolution to Amend Office of Neighborhood Reinvestment Financial Accounting and Oversight Requirements.

Announcement is being made at the earliest practicable time.

No. 289, November 7, 1979.

[S-2200-79 Filed 11-7-79; 3:21 pm]

BILLING CODE 6720-01-M

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: November 13, 1979, 10:00 a.m.

PLACE: Room 12126, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Matson Navigation Company overall 2.9 percent rate increase between U.S. Pacific Coast ports and Hawaii.
2. Agreement No. 10050-3: Application of U.S. Flag-Far East Discussion Agreement for unlimited term of approval.
3. Acceptability of the AIU Insurance Company to write water pollution coverage.
4. Docket No. 78-53: Independent Ocean Freight Forwarder Bids on Government Shipments at United States Ports—Proposed final rules.
5. Docket No. 79-36: Self-Policing of Independent Liner Operators—Review of comments received in response to advance notice of proposed rulemaking.
6. Informal Docket No. 487(I): *Poirette Corsets, Inc.* v. *Consolidated Express, Inc.*—Review of Settlement Officer's decision.
7. Informal Docket No. 693(I): *Dorf International Limited* v. *Flota Mercante Grancolombiana, S.A.*—Petition of respondent for reconsideration.
8. Special Docket No. 675: Application of Sea-Land Service, Inc., and Pacific Westbound Conference for the Benefit of Church World Service—Review of initial decision.
9. Docket No. 79-50: Notice of Inquiry Regarding the United Nations Convention on Code of Conduct for Liner Conferences—Review of comments received in response to notice of inquiry.
10. Docket No. 79-65: Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States—Proposed final rules.
11. Docket No. 79-66: Compromise, Assessment, Settlement and Collection of Civil Penalties under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933—Proposed final rules.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-2195-79 Filed 11-7-79; 10:13 am]

BILLING CODE 6730-01-M

7

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10:00 a.m., Wednesday, November 14, 1979.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed Survey of Transactions Volume in the U.S. Foreign Exchange Markets.

Discussion Agenda

1. Proposed amendments to Regulation O (Loans to Executive Officers, Directors and Principal Shareholders) to implement Titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978. (Proposed earlier for public comment; *docket no. R-0210*).
2. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 6, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-2198-79 Filed 11-7-79; 10:43 am]

BILLING CODE 6210-01-M

8

FEDERAL RESERVE SYSTEM.

TIME AND DATE: Approximately 11:00 a.m., Wednesday, November 14, 1979 (following a recess at the conclusion of a closed meeting to be held earlier the same day).

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Appointment of new members to the Consumer Advisory Council.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 6, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-2199-79 Filed 11-7-79; 10:43 am]

BILLING CODE 6210-01-M

9

[USITC SE-79-44]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10:00 a.m., November 20, 1979.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.

2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: a. Display units (Docket No. 603).
5. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–2196–79 Filed 11–7–79; 10:13 am]

BILLING CODE 7020–02–M

10

MERIT SYSTEMS PROTECTION BOARD.

TIME AND DATE OF MEETING: 9:30 a.m., Thursday, November 15, 1979.

PLACE: 4th Floor Hearing Room, 1717 H Street, N.W., Washington, D.C. 20419.

STATUS: Closed.

SUBJECT: To hear oral presentations by staff members concerning various cases pending before the Board on Petitions for Review.

CONTACT PERSON FOR MORE INFORMATION: Charles J. Stanislav, Jr., Acting Director, Office of the Secretary, 202–653–7130.

Merit Systems Protection Board.

Ruth T. Prokop,

Chairwoman.

[S–2169–79 Filed 11–6–79; 2:58 pm]

BILLING CODE 6325–20–M

11

NATIONAL CONSUMER COOPERATIVE BANK: (Meeting of Board of Directors).

TIME AND DATE: Thursday, November 15, 1979 at 10:00 a.m.

PLACE: Room 4121, Main Treasury Building, 15th Street & Pennsylvania Ave., N.W., Washington, D.C.

STATUS: Parts of the meeting will be open to the public, the rest of the meeting may be closed.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Approval of Agenda.
2. Approval of Summary Minutes of Board Meeting of October 16, 1979.
3. Oral Briefing by the acting President.
4. Reports of Standing Committees:
(a) Credit and Lending Committee,
(b) Personnel and Management Committee,
(c) Self-Help Committee.
5. Discussion of Public Participation Plan and Options.
6. Discussion of Fiscal 1980 Operating Budget.
7. Creation of Audit Committee.
8. Ratification of Creation of Ad Hoc Presidential Search Committee.
9. Ratification of Creation of Ad Hoc Legal Services Committee.
10. Designation of Members of Executive Committee.
11. Report of Ad Hoc Presidential Search Committee.
12. Consideration of Entering Executive Search Session.

Portions Closed to the Public

1. Personnel Interviews.
2. Discussion of Fiscal Year 1981 Budget.

CONTACT PERSON FOR MORE INFORMATION: Pruett Pimberton, at (202) 376–0889.

John P. Comerford,

Acting President.

[S–2194–79 Filed 11–7–79; 9:27 am]

BILLING CODE 4810–25–M

12

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 1:30 p.m., November 15, 1979.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois, 60611.

CHANGES IN THE MEETING: Additional items to be considered at the portion of the meeting which will be closed to the public:

(3) Appeal from referee's denial of an occupational disability annuity, Frank D. Barnes.
(4) Appeal from referee's denial of disability annuity application, Anthony DeGloma.
(5) Appeal from referee's denial of residual lump-sum death benefit, Marjorie S. Townsend.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312–741–4920; FTS No. 387–4920.

[S–2201–79 Filed 11–7–79; 3:44 pm]

BILLING CODE 7905–01–M

13

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 12, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Thursday, November 15, 1979, at 10:00 a.m., immediately followed by a closed meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i), and (10).

Chairman Williams and Commissioners Loomis, Evans and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the open meeting scheduled for Thursday, November 15, 1979, at 10:00 a.m., will be:

1. Consideration of whether to issue a release requesting public comments on proposed amendments to Regulation S-K and certain forms and rules under the Securities Act and the Securities Exchange Act in order to standardize, consolidate, and otherwise improve the Commission's requirements relating to the filing of exhibits. For further information, please contact William H. Carter at (202) 272–2604.
2. Consideration of whether to adopt amendments to Rules 14a–11(c) (1) and (2) under the Securities Exchange Act of 1934 which would increase the number of copies from two to three of information required to be filed with both the Commission and each national securities exchange upon which any security of the issuer is listed and registered, pursuant to Schedule 14B. For further information, please contact Mary A. Binno at (202) 272–2604.
3. Consideration of what response to make to the Senate concerning S. 1380, the Securities Protection Act of 1979, which would make it a felony to steal, counterfeit or otherwise traffic in marketable securities. For further information, please contact Benjamin M. Vandegrift at (202) 272–2436.
4. Consideration of what response to make to the Freedom of Information Act ("FOIA") appeal of Benjamin Spitzer, Request No. 79–943, from the Commission FOIA Officer's decision to withhold inter-agency memoranda pursuant to Exemption 5, 5 U.S.C. 552(b)(5). For further information, please contact David Knight at (202) 272–2454.
5. Consideration of whether to grant a request for waiver of certain provisions of the Commission's Conduct Regulation in connection with the hiring of accounting consultants. For further information, please contact Theodore Bloch at (202) 272–2454.

The subject matter of the closed meeting scheduled for Thursday, November 15, 1979, following the 10:00 a.m. open meeting, will be:

Litigation matter.
Settlement of injunctive action.
Amendment to formal order of investigation.
Settlement of administrative proceeding of an enforcement nature.
Subpoena enforcement actions.
Institution and settlement of administrative proceeding of an enforcement nature.
Freedom of Information Act appeal.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Yearsich at (202) 272–2178.

November 6, 1979.

[S–2197–79 Filed 11–7–79; 10:43 am]

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Federal Register

Friday
November 9, 1979

Part II

Department of Energy

Improving Government Regulations;
Semiannual Agenda of Regulations

DEPARTMENT OF ENERGY

10 CFR Chapters II, III and X

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Department of Energy.

ACTION: Notice of Regulations Under Development or Review.

SUMMARY: The Department of Energy (DOE) is publishing an agenda of regulations under development or review as of October 1, 1979.

FOR FURTHER INFORMATION CONTACT: Sue D. Sheridan (Office of General Counsel), Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6754.

SUPPLEMENTARY INFORMATION: Executive Order 12044, "Improving Government Regulations," promulgated by the President on March 23, 1978 requires every federal agency to publish semiannually an agenda of its significant regulations currently under development or review. One of the objectives of the Order is to encourage greater public involvement at an early stage in the regulatory process. DOE implemented Executive Order 12044 by a Departmental Order (DOE 2030.1) issued December 18, 1978 and published January 3, 1979 (43 FR 1032), which established April and October of each year as the months during which DOE would publish a semiannual agenda of regulations in the Federal Register.

The Departmental Order requires that the agenda include *all* regulations currently being developed or reviewed. For each regulation that is *significant* (as defined in the Departmental Order) the agenda will state the need and legal basis for the regulation, its status, whether a regulatory analysis will be required, and the name and telephone number of a knowledgeable agency official.

Appended to this Notice is DOE's October, 1979, regulatory agenda. In an attempt to be as comprehensive as possible, the agenda is intended to include those DOE regulations, both significant and non-significant, that are under development or review as of October 1, 1979.

If you would like your name to be placed on a mailing list to receive copies of this and future semiannual agendas of regulations, please send your request to: Emmett Gavin, Department of Energy, Forrestal Building, Room 7B118, Washington, D.C. 20585.

The next semiannual agenda is scheduled to be published in April, 1980.

Issued in Washington, D.C. this November 1, 1979.

John C. Sawhill,

Acting Secretary.

ENVIRONMENT

1. DOE NEPA Implementing Procedures

DOE will publish final guidelines implementing the Council on Environmental Quality regulations for compliance with the National Environmental Policy Act.

A regulatory analysis is not required.

Status: Proposed guidelines were published on July 18, 1979 (44 FR 42136).

Authority: National Environmental Policy Act of 1969; EO 11514, as amended.

Contact: Robert Stern (202) 252-4600.

2. Proposed Guidelines for Implementation of Executive Order 12114

DOE will publish final guidelines to implement Executive Order 12114, concerning the Environmental Affects Abroad of Major Federal Actions.

A regulatory analysis is not required.

Status: Proposed guidelines were published on September 6, 1979 (44 FR 52146).

Authority: National Environmental Policy Act of 1969.

Contact: Robert Stern (202) 252-4600.

3. DOE Guidelines Implementing the National Environmental Policy Act

DOE published a rule adopting the Council on Environmental Quality Guidelines for compliance with the National Environmental Policy Act.

Status: DOE published a final rule on August 6, 1979 (44 FR 45918).

Authority: National Environmental Policy Act of 1969.

Contact: Robert Stern (202) 252-4600.

CONSERVATION

1. Weatherization Assistance Amendments

DOE revised existing program regulations to reflect all NEA changes, except for procedures for determining cost-effective measures for weatherizing dwelling units. Revisions include changes in maximum cost per dwelling unit, allowable expenditures, State waiver procedures, and income eligibility. (The rule on procedures for determining cost-effective measures appears elsewhere in this Agenda and is entitled "Revised Approach to Weatherizing of Dwelling Units.")

A regulatory analysis will not be completed.

Status: A final rule was published in the Federal Register May 31, 1979 (44 FR 31570).

Authority: National Energy Conservation Policy Act, Pub. L. 95-619, Section 231.

Contact: Carolyn Martin (202) 252-2207.

2. Revised Approach to Weatherization of Dwelling Units

The change revised and simplified the approach to weatherization previously required by Project Retro-Tech, a four volume conservation paper issued by DOE. The changes require States to develop as part of State plans a list of weatherization measures, categorized by building type and ranked in order of cost-effectiveness. Upon approval of the DOE Regional Representative, States are required to include the list in copies of Project Retro-Tech used by program operators in the State.

A regulatory analysis will not be completed.

Status: A final rule was published in the Federal Register August 29, 1979 (44 FR 50788).

Authority: Sec. 231 National Energy Conservation Policy Act, Pub. L. 95-619.

Contact: Carolyn Martin (202) 252-2207.

3. Electric & Hybrid Vehicle Loan Guarantees

DOE amended the Electric and Hybrid Vehicle Loan Guarantee to clarify program coverage.

A regulatory analysis will not be completed.

Status: A final rule was published in the Federal Register May 12, 1978 (43 FR 20476). An amendment to the final rule was published in the Federal Register May 31, 1979 (44 FR 31510).

Authority: Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, as amended.

Contact: Anthony Ewing (202) 376-4747.

4. Electric & Hybrid Vehicle Planning Grants

DOE has promulgated rules establishing the requirements for grants to small businesses under the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976.

A regulatory analysis will not be completed.

Status: A final rule was published in the Federal Register October 4, 1979 (44 FR 57370) Part 6.

Authority: Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, as amended.

Contact: Anthony Ewing (202) 376-4747.

5. Electric & Hybrid Vehicle Performance Standards for Demonstrations

DOE plans to amend the regulations which prescribe minimum performance standards for electric or hybrid vehicles purchased or leased for use in demonstration projects to be conducted by DOE.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking was published in the Federal Register September 6, 1979 (44 FR 52140).

Authority: Electric & Hybrid Vehicle Research, Development and Demonstration Act of 1976, Public Law 94-413, as amended by Pub. L. 93-438, and Pub. L. 95-91.

Contact: Charles Pax (202) 376-4893.

6. Identify Consumer Product Types Which May Be Subject to Minimum Energy Efficiency Standards

DOE will publish a notice listing those types of covered products which may be subject to energy efficiency standards. Criteria for selecting these types of covered products include considering the average annual per-household energy use of individual types of consumer products.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking has not yet been issued.

Deadline: Not later than November, 1980.

Authority: Energy Conservation and Production Act Section 325(a)(2) [Pub. L. 94-385], as amended by National Energy Conservation Policy Act, Section 422 [Pub. L. 95-619].

Contact: James A. Smith (202) 376-4814.

7. Notice of Representative Average Unit Costs of Energy

DOE published a notice providing representative average unit costs of energy used in determining operating costs of certain consumer products.

A regulatory analysis will not be completed.

Status: A notice was previously issued July 15, 1979. (44 FR 37534, July 27, 1979). A notice updating these figures was published in the Federal Register July 15, 1977 (42 FR 36549).

Authority: Sec. 323 Energy Policy and Conservation Act, Pub. L. 94-163.

Contact: James A. Smith (202) 376-4814.

8. Amendment to Central Air Conditioner Test Procedures

DOE plans to amend the existing central air conditioner test procedures to include heat pumps. Heat pumps were not included in the original central air conditioner test procedures because proposed test procedures for heat pumps had not yet been developed.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking was published April 19, 1979 (44 FR 23469).

Authority: Energy Policy and Conservation Act, Section 323, Pub. L. 94-163, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619.

Contact: James A. Smith (202) 376-4814.

9. Amendment to Room Air Conditioner Test Procedures

DOE intends to amend its test procedures for room air conditioners, prescribed under the Energy Conservation Program for Consumer Products, to provide an alternative method for measuring the energy consumption of package terminal air conditioners.

It has not yet been determined whether a regulatory analysis is required.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: Sec. 323, Energy Policy and Conservation Act, (Pub. L. 94-163).

Contact: James A. Smith (202) 376-4814.

10. Amendment to Water Heater Test Procedures

DOE amended the test procedures for water heaters which were established as part of the energy efficiency program for consumer products, establishing procedures for devising another measure of energy consumption to assist consumers in making purchasing decisions.

A regulatory analysis was not completed.

Status: A final rulemaking was published in the Federal Register September 7, 1979 (44 FR 52632).

Authority: Sec. 323, Energy Policy and Conservation Act, (Pub. L. 94-163).

Contact: James A. Smith (202) 376-4814.

11. Amendment to Furnace Test Procedures

DOE plans to amend its test procedures for furnaces, prescribed under the Energy Conservation Program for Consumer Products, to produce a more accurate measure of the energy consumption of pulse combustion furnaces and condensing furnaces.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: Sec. 323, Energy Policy and Conservation Act, (Pub. L. 94-163).

Contact: James A. Smith (202) 376-4814.

12. Amendment to Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers

DOE amended its test procedures for refrigerators, refrigerator-freezers, and freezers, prescribed under the Energy Conservation Program for Consumer Products, simplifying the test procedures.

It has not yet been determined whether a regulatory analysis is required.

Status: No notice of a proposed rulemaking has yet been published.

Authority: Sec. 323, Energy Policy and Conservation Act, (Pub. L. 95-163).

Contact: James A. Smith (202) 376-4814.

13. Energy Efficiency Standards for Nine Types of Consumer Products

DOE will establish minimum energy efficiency standards for nine product types: refrigerators and refrigerator-freezers, freezers, water heaters, room aid conditioners, kitchen ranges and ovens, furnaces, central air conditioners, home heating equipment (not including furnaces), and clothes dryers.

It has not yet been determined whether a regulatory analysis is required.

Status: An advance notice of proposed rulemaking was published January 2, 1979 (44 FR 49). A notice of proposed rulemaking has not yet been issued.

Deadline: Final rule no later than January 1981.

Authority: Energy Conservation and Production Act, Section 325 (Pub. L. 94-385), as amended by National Energy Conservation Policy Act, Section 422 (Pub. L. 95-619).

Contact: James A. Smith (202) 376-4814.

14. Energy Efficiency Standards for Four Types of Consumer Products

DOE will establish minimum energy efficiency standards for four product types: Humidifiers/dehumidifiers, clothes washers, television sets and dishwashers.

A regulatory analysis will be completed.

Status: An advance notice of proposed rulemaking has not yet been issued.

Deadline: Advance Notice no later than November 1981.

Authority: Energy Conservation and Production Act, Section 325 (Pub. L. 94-385), as amended by National Energy Conservation Policy Act, Section 422 (Pub. L. 95-619).

Contact: James A. Smith (202) 376-4814.

15. Federal Agency Energy Conservation Planning Guidelines and Energy Audits

DOE will promulgate guidelines containing requirements and procedures which individual Federal agencies will use in preparing energy conservation plans for Federal buildings.

A regulatory analysis will not be completed.

Status: No notice concerning the guidelines has not yet been published. A notice of proposed rulemaking was issued April 20, 1979 (44 FR 24800, April 26, 1979).

Authority: Title III of the Energy Policy and Conservation Act, as amended (Pub. L. 94–163); Title V, National Energy Conservation Policy Act (Pub. L. 95–619).

Contact: William Rhodes (202) 376–4017.

16. Reporting Guidelines for Municipal Waste Reprocessing Demonstration Program

Section 20 of the Federal Non-nuclear Energy Research and Development Act of 1974, as amended, provides for financial assistance to establish municipal waste reprocessing demonstration facilities. Guidelines are required to obtain pertinent information about projects funded by DOE under section 20.

A regulatory analysis will not be completed.

Status: A notice of inquiry for these guidelines was published in the Federal Register April 25, 1979 (44 FR 24298).

Authority: Section 20 of the Federal Non-nuclear Energy Research and Development Act of 1974, as amended (Pub. L. 95–238).

Contact: Donald Walter (202) 376–1964.

17. Price Support Rules for Municipal Waste Reprocessing Demonstration Program

DOE will promulgate rules setting forth the procedures and policies governing the award of price supports as financial assistance to facilitate establishment of municipal waste reprocessing demonstration facilities.

A regulatory analysis will not be completed.

Status: An advanced notice of proposed rulemaking was published in the Federal Register September 7, 1979 (44 FR 52642).

Authority: Section 20 of the Federal Non-nuclear Energy Research and Development Act of 1974, as amended (Pub. L. 95–238).

Contact: Donald Walter (202) 376–1964.

18. Municipal and Industrial Waste Reprocessing Loan Guarantees

DOE has proposed a rule which would enable DOE to guarantee loans for municipal and industrial waste reprocessing.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking was published in the Federal Register July 18, 1979 (44 FR 42094).

Authority: Federal Nonnuclear Energy Research and Development Act of 1974, Section 19(y) (Pub. L. 93–577), as amended.

Contact: Don Walter (202) 376–1964.

19. Federal Photovoltaic Utilization Program

DOE is developing regulations for the monitoring and assessment of the performance and operation of photovoltaic systems installed under the Federal Photovoltaic Utilization Program.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking was published in the Federal Register May 9, 1979 (44 FR 27194).

Authority: National Energy Conservation Policy Act, Section 566(2) (Pub. L. 95–619).

Contact: Elaine Smith (202) 376–9669.

20. Life Cycle Costing Procedures for Federal Buildings

DOE is developing and prescribing procedures for estimating and comparing life cycle costs for purchase and installation of energy conservation measures for Federal buildings.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking was published in the Federal Register April 30, 1979 (44 FR 25366).

Authority: Energy Policy and Conservation Act; Public Law 94–163, Section 381(a)(2) as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, Section 545. Executive Order 11912 as amended by Executive Order 12003.

Contact: Jack Vitullo (202) 376–4017.

21. Technical Assistance and Energy Conservation Measures—Schools, Hospitals, Local Public Buildings

DOE will promulgate regulations for grants to schools, hospitals, local governments and public care institutions for technical assistance and energy conservation measures.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was published January 5, 1979 (44 FR 1580). Final rules were issued April 2, 1979 (44 FR 19340) and April 17, 1979 (44 FR 22940).

Deadline: Within 90 days of enactment.

Authority: National Energy Conservation Policy Act (Pub. L. 95–619).

Contact: M. Willingham (202) 376–9770.

22. Industrial Energy Conservation Program

DOE will establish requirements and issue report forms for major energy consuming corporations to report to DOE on their annual energy consumption and their progress in improving energy efficiency. DOE also will set targets for increased use of energy-saving recovered materials for specified industries, *i.e.*, metals and metal products, textile mill products and rubber, and establish requirements for reporting on progress made to increase use of recovered materials by major energy consuming corporations in these industries.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was published in the Federal Register June 8, 1979 (44 FR 33344).

Deadline: Final targets by November 1979.

Authority: Energy Policy and Conservation Act, Title III, Part D, Pub. L. 94–163, as amended by National Energy Conservation Policy Act, Pub. L. 95–619.

Contact: Douglas Harvey (202) 252–2072.

23. Demonstration of Solar Heating & Cooling in Federal Buildings

DOE will develop criteria for evaluation of agency-submitted proposals for installing solar heating and cooling systems in Federal buildings and requirements for operating and maintenance reports.

It has not yet been determined whether a regulatory analysis is required.

Status: A notice of proposed rulemaking was published in the Federal Register April 2, 1979 (44 FR 19328). A final rulemaking is expected to be published October 1979. An environmental assessment is completed.

Authority: National Energy Conservation Policy Act, Sections 521–524 (Pub. L. 95–619).

Contact: W. Lemeshewsky (202) 376–9622.

24. Building Energy Performance Standards

DOE intends to propose standards for new residential, Federal, and commercial buildings.

A regulatory analysis will be completed.

Status: An advanced notice of proposed rulemaking was published November 21, 1978 (43 FR 54512).

Authority: Title III of the Energy Conservation and Production Act, Public Law 94–385, amended by Public Law 95–91 and Public Law 95–619.

Contact: Jim Binkley (202) 376–4888.

25. Residential Conservation Service Program (Utility Program)

DOE will develop regulations to implement Part I of Title II of NECPA, which provides for programs to facilitate retrofitting of energy conservation measures in existing private residences.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was issued March 12, 1979 (44 FR 16546, March 19, 1979).

Deadline: NOPR by March 2, 1979.

Authority: National Energy Conservation Policy Act, Part I, Title II, Pub. L. 95-619.

Contact: Jim Tanck (202) 376-4708.

26. Industrial Waste Loan Guarantee Program

DOE intends to propose rules for a program of loan guarantees covering up to 75% of the cost of demonstration facilities for the utilization of industrial waste materials.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: DOE Act of 1978—Civilian Applications, Pub. L. 95-238, Section 19(y).

Contact: Tom Gross (202) 252-2384.

27. Lighting Efficiency Standards for Existing Buildings

DOE is requesting comments on possible changes to current State Energy Conservation Plan program minimum criteria for lighting standards for existing buildings (10 CFR 4.20.7(A)(4)).

A regulatory analysis decision has not been made.

Status: A notice of inquiry was published in the Federal Register August 6, 1979 (44 FR 45958).

Authority: Energy Policy and Conservation Act, Pub. L. 94-163, Title III, Section 362(c)(1).

Contact: John Anderson (202) 252-2353.

28. Renewable Energy Resources

DOE is requesting the public to identify DOE regulations which interfere with the development of renewable resources.

A regulatory analysis decision has not been made.

Status: A notice of inquiry was published in the Federal Register August 29, 1979 (44 FR 50801).

Authority: Executive Order 12044.

Contact: John Schuler (202) 376-9633.

29. Guidelines for Appropriate Technology Small Grants Program

DOE will propose amendments to the program guidelines for the Appropriate Technology Small Grants Program (10 CFR Part 470) to reflect a change in the allocation of grant monies and other program changes.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was published in the Federal Register August 8, 1978 (43 FR 35020).

Authority: ERDA Appropriation Authorization of 1977, Pub. L. 95-39, Section 112.

Contact: Ann Hegnaur (202) 376-4480.

30. Identification of Hard-To-Understand Energy Conservation Regulations

DOE is requesting the public to identify DOE regulations which are hard to understand.

A regulatory analysis will not be completed.

Status: A notice of inquiry has not yet been published.

Authority: Executive Order 12044.

Contact: Herb Myers (202) 376-4826.

31. Evaluation of Industrial Electric Motors and Pumps

DOE is required to conduct a detailed classification and evaluation study of industrial electric motors and pumps, and to submit a report to Congress on electric motors and pumps after providing interested persons an opportunity to comment on the proposed report.

A regulatory analysis will not be completed.

Status: No notice on this report has yet been published.

Authority: National Energy Conservation Policy Act, Pub. L. 95-619, Title IV, Part 3, Section 441.

Contact: Tom Gross (202) 252-2384.

32. Plant Reporting Form for Industrial Energy Efficiency Progress Reporting

DOE must prepare, publish and make available plant reporting forms for industrial energy efficiency progress reporting.

A regulatory analysis will not be completed.

Status: A notice of the proposed plant reporting form was published in the Federal Register July 17, 1979 (44 FR 41652).

Authority: Energy Policy and Conservation Act, Pub. L. 94-163, Section 375 (c) and (d) as amended by the National Energy Conservation and Policy Act, Pub. L. 95-619, Section 601.

Contact: T. Williams (202) 252-2371.

33. Guidelines for Overall Federal Energy Management Planning

By Executive direction, all Executive Agencies are required to develop plans, establish goals and report on progress in energy conservation in all their operations. This rule provides the guidance necessary to develop these plans.

A regulatory analysis will not be completed.

Status: Notice of proposed rulemaking has not yet been published.

Authority: Executive Order 12003, Section 10(d).

Contact: Paul Brumby (202) 376-4017.

34. Emergency Building Temperature Restrictions

The Emergency Building Temperature Restrictions Plan places temporary restrictions on temperatures for heating, cooling and domestic hot water in commercial, industrial, government, and other non-residential buildings. This standby measure was developed by ERA to be used in the event of a petroleum shortfall.

It has not yet been decided whether a regulatory analysis is required.

Status: Proposed regulations were developed by Conservation and Solar Applications and published in the Federal Register on June 1, 1979 (44 FR 31922) and final regulations were published July 5, 1979 (44 FR 39354). The President transmitted to Congress on July 10, 1979, his finding that there was a need to implement the plan effective July 16, 1979.

Deadline: Expiration date is April 6, 1980, unless rescinded earlier by the President.

Authority: Energy Policy and Conservation Act of 1975, Public Law 94-163.

Contact: John Milfhone (202) 376-4647.

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

1. Comprehensive Equal Opportunity (EO) Regulations for all Federally Assisted DOE Programs and Activities

The Office of Equal Opportunity—Federally Assisted Programs Division (FAPD) will develop comprehensive regulations to implement the Equal Opportunity Requirements for all Federally assisted DOE programs and activities.

Status: A notice of proposed rulemaking was published November 16, 1978 (43 FR 53658).

Authority: Title VI of 1964 Civil Rights Act; Title IX of 1972 Education Amendments; Section 504 of the 1973 Rehabilitation Act.

Contact: Carlos A. Ruiz (202) 252-2244.

2. Age Discrimination Regulations

The Office of Equal Opportunity—Federally Assisted Programs Division will develop regulations to implement non-discrimination requirements of the Age Discrimination Act of 1975.

Status: Draft proposed rules are currently being developed. No notice has yet been published.

Authority: Age Discrimination Act of 1975.

Contact: Carlos A. Ruiz (202) 252-2244.

GENERAL COUNSEL

1. Proposed Regulations on DOE Participation in Establishment of Standards by Non-Federal Entities

DOE will prescribe guidelines which set forth the extent to which, and the terms and conditions under which, DOE employees may participate in their official capacity, where such participation is in the public interest and is relevant to the purposes of DOE, in a non-Federal entity which promulgates commercial standards (such as specifications of materials and methods of testing).

A regulatory analysis is not required.

Status: No notice concerning the regulations has yet been published.

Deadline: 90 days after enactment of statutory authority (Sec. 9, Pub. L. 95-70).

Authority: Federal Energy Act, as amended, Section 32, 15 U.S.C. 788 incorporated under the Department of Energy Organization Act (Pub. L. 95-91; 42 U.S.C. 7101 *et seq.*).

Contact: Ralph D. Goldenberg (202) 353-5285.

2. Regulations for Implementation of the Foreign Gifts and Decorations Act

DOE will propose regulations to establish procedures and policies relating to the acceptance, use and disposition of gifts and decorations from foreign governments.

A regulatory analysis is not required.

Status: No notice concerning this regulation has yet been published.

Authority: Foreign Gifts and Decorations Act, 5 U.S.C. 7342.

Contact: Ralph Goldenberg (301) 353-5285.

3. Privacy Act Regulations

DOE will promulgate regulations to implement DOE compliance with 5 U.S.C. 552(a), the Privacy Act of 1974. The rulemaking will provide Department-wide regulations to replace Privacy Act regulations implemented by FEA and ERDA which are presently in force.

A regulatory analysis is not required.

Status: No notice concerning the regulations has yet been published.

Authority: Department of Energy Organization Act, Pub. L. 95-91 and authorities incorporated by reference therein; 5 U.S.C. 552(a).

Contact: Ken Cohen (202) 633-9296.

4. Administrative Claims Under Federal Tort Claims Act

DOE will issue regulations to implement the Federal Tort Claims Act, 28 U.S.C. 2672, *et seq.*, and supplementing the Attorney General's regulations, 28 CFR Part 14. The rulemaking will provide Department-wide regulations and procedures for the administration of tort claims against the DOE. These matters are presently implemented and processed under ERDA and Department of Justice implementation as applicable.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published September 21, 1979 (44 FR 54719).

Authority: DOE Organization Act (Pub. L. 95-91); the Federal Tort Claims Act, 28 U.S.C. 2672.

Contact: Ken Cohen (202) 633-9296.

5. DOE Licensing Regulations

This regulation governs licensing of inventions owned or controlled by the Department of Energy. It is needed to provide guidance to the public on procedures for obtaining non-exclusive and exclusive licenses and on standards under which such licenses may be granted and the terms and conditions of the licenses.

No regulatory analysis is required.

Status: No notice concerning this regulation has yet been published.

Authority: Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908(g); the Atomic Energy Act of 1954 as amended, 42 U.S.C. 2186 and general authorities available to the Department due to transfer of functions from other agencies under the DOE Organization Act and other acts.

Contact: Robert Marchick (301) 353-4970.

6. DOE Administrative Patent and Copyright Infringement Claims

The regulation will provide policy and procedures for filing and processing administrative claims alleging infringement of U.S. patents and copyright by or on behalf of the Department of Energy. The regulation is needed to provide guidance to the public as to requirements and procedures that will be followed in settling, denying, or otherwise disposing of administrative infringement claims.

No regulatory analysis is required.

Status: A notice of proposed rulemaking was published July 11, 1979 (44 FR 40521).

Authority: Department of Energy Organization Act, 42 U.S.C. 7261, Energy Reorganization Act, 42 U.S.C. 5817; Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(g), 2223.

Contact: Jack Lever, (301) 353-5093.

INTERGOVERNMENTAL RELATIONS

Intervenor Funding Regulations

These proposed regulations are designed to provide financial assistance to qualified persons who have or represent an interest which would not otherwise be adequately represented in certain DOE decision-making processes.

A regulatory analysis is not required.

Status: No notice has been published. An express prohibition against use of FERC funds for intervenor funding is contained in Pub. L. 96-69, Title I, Section 103. Although there is no express congressional prohibition against the use of other appropriated funds for this purpose, the Department has determined to stay action on these regulations pending prior congressional approval.

Authority: Department of Energy Organization Act (Pub. L. 95-91, and authorities cited therein).

Contact: Polly Craighill (202) 252-5871.

PROCUREMENT AND CONTRACTS

1. DOE Assistance Regulation—Loans, Loan Guarantees, Price Supports, Other Incentives (Subparts D, E, F)

The regulation will provide policies and procedures concerning the use of loans, loan guarantees, price supports, and other methods to award financial assistance. The regulation is needed to provide guidance to the public as to what requirements must be met and what standards will be followed in entering into agreements.

A regulatory analysis is not required.

Status: No notice concerning this regulation has been published.

Authority: Department of Energy Act, section 644, and general authorities available to the Department due to the transfer of functions from other agencies (e.g., the Federal Nonnuclear Energy Research and Development Act of 1974).

Contact: Frank Koner (202) 376-1838.

2. DOE Assistance Regulation (Subpart C—Cooperative Agreements)

The regulation will provide policies and procedures concerning the use of cooperative agreements to award financial assistance. The regulation is needed to provide guidance to the public as to what requirements must be met and what standards will be followed in entering into cooperative agreements.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was issued on March 29, 1979 (44 FR 20594, April 5, 1979).

Authority: Department of Energy Organization Act, Section 644, and general authorities available to the Department due to the transfer of functions from other agencies (e.g. the

Federal Nonnuclear Energy Research and Development Act of 1974).

Contact: Bob Walsh (202) 376-1768.

3. DOE Procurement Regulations

The regulation, along with the Federal Procurement Regulations governs procurement by the Department of Energy. The regulation is needed to provide a wide range of implementation necessary to the Department's extensive procurement activities.

A regulatory analysis is not required.

Status: A final rule was issued effective June 30, 1979 (44 FR 34424) June 14, 1979.

Authority: Department of Energy Organization Act, and general authorities available to the Department due to the transfer of functions from agencies conducting substantial procurement (e.g., the Atomic Energy Act of 1954, the Energy Reorganization Act of 1974, and the Federal Nonnuclear Energy Research and Development Act of 1974).

Contact: Martin Kestenbaum (202) 376-1759.

RESOURCE APPLICATIONS

1. Geothermal Bidding Systems

DOE is analyzing which bidding systems will best encourage geothermal development. When this analysis is completed, DOE will incorporate those bidding systems in a regulation establishing bidding procedures for geothermal lease sales.

A regulatory analysis is not required.

Status: No notice concerning the regulation has yet been published.

Authority: Department of Energy Organization Act, Section 302(b)(2), Pub. L. 95-91.

Contact: Robert H. Lawton (202) 633-9326.

2. Geothermal Competitive Interest Regulation

DOE will publish regulations redefining "known geothermal resource area" (KGRA) to establish criteria to determine what constitutes competitive interest for leasing tracts of Federal land for geothermal exploration and development.

A regulatory analysis is not required.

Status: No notice concerning the regulation has yet been published.

Authority: Department of Energy Organization Act, Section 302(b)(1), Pub. L. 95-91.

Contact: Robert H. Lawton (202) 633-9326.

3. Geothermal Loan Guaranty Regulations

DOE intends to analyze, clarify and amend the geothermal loan guarantee regulations.

A regulatory analysis will be completed.

Status: A Notice of Proposed Rulemaking and nature of Public Hearings was published January 5, 1979 (44 FR 1568).

Authority: Geothermal Energy Research Development and Demonstration Act of 1974 (Pub. L. 93-410), Department of Energy Act 1978—Civilian Applications (Pub. L. 95-238) and the Department of Energy Organization Act, Pub. L. 95-91.

Contact: Larry Falick (202) 633-8107.

4. Hydroelectric Feasibility Study and Project Costs Loan Program

DOE will develop regulations for loans for feasibility studies and for constructing small hydroelectric projects.

A regulatory analysis has been completed.

Status: A Notice of Proposed Rulemaking for feasibility studies was published May 24, 1979 (44 FR 30278) Public hearings were held in Boston, Massachusetts on July 2, 1979, and in Seattle, Washington, on June 25, 1979.

Authority: Public Utility Regulatory Policy Act (section 403 Pub. L. 95-817).

Contact: Farwell Smith (202) 633-8705.

5. Coal Bidding Systems Regulations

DOE is preparing proposed regulations to establish bidding systems for the sale of Federal coal leases. Bidding systems help obtain fair market value and enhance competition for Federal leases.

A regulatory analysis is being written.

Status: A notice concerning the regulation has not yet been published. DOI and DOE are coordinating efforts.

Authority: Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*)), section 302(b) and 303(c).

Contact: Robert H. Lawton, (202) 633-9326.

6. Coal Diligence Regulation

DOE is preparing a proposed regulation for new, adjusted, and assigned coal leases that will establish requirements for the timely submission of exploration and mining plans. This regulation will ensure diligent development of and production from Federal coal leases.

A regulatory analysis will accompany the Notice of Proposed Rulemaking.

Status: No Notice of Proposed Rulemaking has been published.

Authority: DOE organization Act (Pub. L. 95-91) section 302(b)(3).

Contact: Robert H. Lawton (202) 633-9326.

7. Coal Loan Guarantee Program

DOE intends to simplify the Coal Loan Guarantee regulations, and to expand them to include loan guarantees to build preparation plants to reduce the sulfur content of coal.

A regulatory analysis is not required.

Status: No notice concerning the regulations has yet been published.

Authority: Section 102 of the Energy Policy and Conservation Act, as amended, and Section 802 of the Powerplant and Industrial Fuel Use Act of 1978.

Contact: Robert Grubenman (202) 633-9154.

8. Coal Regulations

DOE is analyzing the need for and viability of regulations concerning bidding systems and procedures, competition and diligence. These regulations would (1) foster competition, (2) ensure receipt of fair market value, and (3) promote timely developmenmt of Federal coal leases.

A regulatory analysis is not required.

Status: No notice concerning these regulations has been published.

Authority: Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*)), sections 302(b) and 303(c).

Contact: Robert H. Lawton (202) 633-9326.

9. Community Impact Assistance

DOE is drafting regulations to establish procedures by which municipalities, Indian Tribes and other qualified entities having geothermal development projects in their communities can obtain Federal aid for planning in order to mitigate adverse impacts.

A regulatory analysis will be completed.

Status: No notice concerning the regulation has been published.

Authority: Department of Energy Act of 1978—Civilian Applications (Pub. L. 95-238).

Contact: Larry Falick (202) 633-8107.

10. OCS Bidding Systems Regulations

DOE is promulgating rules to establish bidding systems for the sale of oil and gas leases on the Outer Continental Shelf. Bidding systems help obtain fair market value and enhance competition for Federal leases.

A regulatory analysis has been completed.

Status: A notice of Proposed Rulemaking was published on August 6, 1979 and public comments are due by October 9, 1979 (44 FR 46236).

Authority: Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*)), sections

302(b) and 303(c); Outer Continental Shelf Lands Act (Act of August 7, 1953, ch. 345, 67 Stat. 462 (43 U.S.C. 1331 *et seq.*), as amended by Pub. L. 95-372, 92 Stat. 629)), section 8.

Contact: Robert H. Lawton (202) 633-9326.

11. OCS Diligence Regulation

DOE is analyzing the need for a regulatory approach to OCS diligence in contemplation of a proposed rule. DOE would use such a proposed rule, if needed, to enforce diligence in OCS operations.

A draft regulatory analysis has been prepared.

Status: A Notice of Inquiry was published in the May 14, 1979, issue of the Federal Register, at 44 FR 28037. The comments received in reply to this Notice have been summarized and may be incorporated into the regulatory analysis.

Authority: Department of Energy Organization Act, section 302(b)(3) (Pub. L. 95-91).

Contact: Robert H. Lawton (202) 633-9326.

12. OCS Profit Share Bidding Regulation

DOE is preparing a proposed regulation to establish a fixed profit share bidding system for the sale of oil and gas leases on the Outer Continental Shelf. Included is a proposed regulation to establish accounting procedures to govern calculation of the profit share and the allocation of costs and revenues. This proposal will enhance competition for federal OCS leases.

A draft regulatory analysis has been prepared.

Status: No notice concerning the regulation has yet been published.

Authority: Department of Energy Organization Act, section 302(b)(2), (Pub. L. 95-91).

Contact: Robert H. Lawton (202) 633-9326.

13. OCS Work Commitment Bidding System

DOE is beginning the necessary analysis to prepare a proposed regulation to establish a work commitment bidding system for the sale of oil and gas leases on the Outer Continental Shelf. This regulation would implement an alternative bidding system authorized under the Outer Continental Shelf Lands Act, as amended.

A regulatory analysis will be completed.

Status: No notice concerning the regulation has yet been published.

Authority: Department of Energy Organization Act, section 302(b)(2) (Pub. L. 95-91).

Contact: Robert H. Lawton (202) 633-9326.

14. Power and Transmission Rate Adjustment Procedures

Uniform procedures are being developed by the Office of Resource Applications for Federal power marketing administrations to contact their customers and encourage participation by interested parties in rate adjustment proceedings.

A regulatory analysis is not required.

Status: Proposed power and transmission rate adjustment procedures were published in the Federal Register on July 5, 1979 (44 FR 39184), with the invitation for written comments. In addition, oral hearings were held in Washington, D.C., on July 27 and August 17, 1979.

After review and analysis of comments, a proposed revision of the Procedures will be prepared. Final Procedures as adopted will be published in the Federal Register.

Authority: Departmental Energy Organization Act. Public Law 95-91; and related acts applicable to the Power Marketing Administrations.

Contact: Jim Braxdale (202) 633-8338.

15. Royalty Oil Regulations

The proposed regulations would continue the operation and policy of the existing DOI programs, but contain certain substantive changes.

A regulatory analysis is not required.

Status: On Friday, August 3, 1979, DOE published in the Federal Register (44 FR 45900 (1979)) a notice of Proposed Rulemaking and Public Hearing Regarding the Acquisition and Disposition of Federal Royalty Oil Taken in Kind. Public hearings were held in Washington, D.C. on September 12, 1979, and the closing date for receipt of written comments is October 5, 1979.

Authority: Department of Energy Organization Act, Section 302(b)(5), Pub. L. 95-91.

Contact: Robert H. Lawton, (202) 633-9326.

16. Sequential Bidding Process Regulations

DOE has prepared a proposed regulation to establish a sequential bidding process for experimental use in Outer Continental Shelf oil and gas lease sales. This proposal will enhance competition by increasing the number of participants and bids submitted.

A regulatory analysis has been completed.

Status: A Notice of Proposed Rulemaking was published in the September 11, 1979, issue of the Federal Register, at 44 FR 52842. Public hearings were scheduled in New Orleans, Los Angeles, and Washington, D.C., for completion by mid-October. The period for public comment ends on November 14, 1979.

Authority: Department of Energy Organization Act, section 302(b)(1), (Pub. L. 95-91).

Contact: Robert H. Lawton, (202) 633-9326.

ECONOMIC REGULATORY ADMINISTRATION

National Energy Act Regulations

1. NEA Fuel Use Act—New Facilities (ERA Docket ERA-R-78-19)

These regulations implement the prohibitions against use of oil and gas by new facilities and establish the criteria for issuance of exemptions provided by law.

A regulatory analysis will be completed.

Status: Interim rule issued May 8, 1979 (44 FR 28950, May 17, 1979). Public comment period closes October 31, 1979. Final regulations due to be issued FY 1980.

Authority: Powerplant & Industrial Fuel Use Act of 1978, Title II (Public Law 95-620).

Contact: Stephen M. Stern, (202) 254-9766.

2. NEA Fuel Use Act—Transitional Facilities (ERA Docket ERA-R-78-21)

This rule provides the criteria ERA will use to determine whether certain facilities are either new or existing for the purposes of the Powerplant and Industrial Fuel Use Act.

A draft regulatory analysis has been completed.

Status: Revised Interim rule issued March 15, 1979 (44 FR 17464, March 21, 1979). A final rule was published October 19, 1979 (44 FR 60690).

Authority: Powerplant and Industrial Fuel Use Act of 1978 (44 U.S.C. 8301 *et seq.*).

Contact: Stephen M. Stern, (202) 254-9766.

3. NEA Fuel Use Act—Existing Facilities (ERA Docket ERA-R-78-19)

These regulations implement the statutory prohibitions, provide the criteria ERA will employ in issuing prohibition orders and establish the criteria for issuance of exemptions provided by law for existing facilities. These regulations also prohibit the increased use of petroleum by existing powerplants and implement the System Compliance Option provided in the law.

A regulatory analysis will be completed.

Status: Interim rules issued May 8, June 12 and July 11, 1979 (44 FR 28549, May 15, 1979; 44 FR 30062, June 20, 1979; and 44 FR 43176, July 23, 1979). Public comment closes October 31, 1979. Final regulations due to be issued FY 1980.

Authority: Powerplant and Industrial Fuel Use Act of 1978, Title III and Sections 405 and 501 (Pub. L. 95-620).

Contact: Stephen M. Stern, (202) 254-9766.

4. NEA Fuel Use Act—Emergency Use of Natural Gas (ERA Docket ERA-R-78-19D)

These regulations will govern the temporary use of gas or oil during emergency conditions.

A regulatory analysis will be completed.

Status: Interim rule issued May 8, 1979 (44 FR 28530, May 15, 1979). Public comment period closes October 31, 1979. Final regulations due to be issued during FY 1980.

Authority: Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620).

Contact: Stephen M. Stern, (202) 254-9766.

5. NEA Fuel Use Act—Rules of Practice for Conducting Public Hearings

This rule would propose the detailed rules of practice ERA would use in the conduct of public hearings held pursuant to the Powerplant and Industrial Fuel Use Act.

A regulatory analysis will not be completed.

Status: Notice of Proposed Rulemaking due by end of calendar year 1979.

Authority: Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.*

Contact: Stephen M. Stern, (202) 254-9766.

6. NEA Fuel Use Act—Alternate Fuels Matrix

This notice of Inquiry would be issued to assist in the determination of the state of the art of various technologies to burn various alternate fuels for purposes of the Powerplant and Industrial Fuel Use Act.

A regulatory analysis will not be completed.

Status: Notice of Inquiry due to be issued by end of calendar year 1979.

Authority: Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.*

Contact: Stephen M. Stern, (202) 254-9766.

7. NEA Fuel Use Act—Emergency Natural Gas Regulations

ERA will develop regulations regarding the purchase and the allocation of natural gas during a presidentially declared natural gas emergency.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: Natural Gas Policy Act of 1978, Title III [Pub. L. 95-621].

Contact: Lynnette Hucul (202) 632-4721.

8. NEA Fuel Use Act—Review of Natural Gas Curtailment Priorities including Industrial Process Fuel Use Issues (ERA Docket ERA-R-79-10)

ERA will conduct an inquiry into whether existing natural gas curtailment priorities should be modified and, if so, in what manner. The inquiry will include consideration of curtailment of industrial process and feedstock uses. It will also consider to what extent the priority system can and should be used to induce increased usage of coal and other non-petroleum fuels. It will also consider how curtailment authorities may be used to increase heavy oil production.

A regulatory analysis will be completed.

Status: A notice of inquiry was issued on March 13, 1979. (44 FR 16954, March 20, 1979).

Authority: Natural Gas Policy Act of 1978, Section 402 (Pub. L. 95-621) and DOE Act Sections 301 and 402.

Contact: Albert F. Bass (202) 632-4721.

9. NEA Fuel Use Act—Administrative Procedures for Adjustments of Natural Gas Curtailment Priority Regulations (ERA, Docket ERA-R-79-24)

This rule proposes procedures for the making of adjustments to its natural gas curtailment priority regulations in Subchapter G of Chapter II of 10 CFR. Immediately, these procedures are applicable to the regulations established for essential agricultural uses in 10 CFR Part 580.

A regulatory analysis is not required.

Status: A proposed rule was issued on May 7, 1979 (44 FR 27676, May 11, 1979).

Authority: Natural Gas Policy Act of 1978, Sections 502; 506 (Pub. L. 95-621), Department of Energy Organization Act, Section 644 (Pub. L. 95-91) and the Administrative Procedures Act (Pub. L. 89-554).

Contact: Paula Daigneault (202) 632-4721.

10. NEA Fuel Use Act—Prohibition on Use of Natural Gas for Decorative Outdoor Lighting

DOE will develop regulations prohibiting use of natural gas for decorative lighting in industrial, commercial and residential and municipal settings, including sale of natural gas for such purposes.

A regulatory analysis is not required.

Status: A final rule was published May 10, 1979 (44 FR 27606).

Deadline: Final rule within 180 days after enactment.

Authority: Powerplant and Industrial Fuel Use Act, Section 402 (Pub. L. 95-620).

Contact: Howard Perry, (202) 254-8224.

11. NEA Fuel Use Act—PURPA—State Regulatory Reporting Requirements

ERA will develop proposed reporting requirements to be followed by states.*

A regulatory analysis was completed.

Status: A notice of proposed rulemaking was issued April 6, 1979. (44 FR 22974, April 17, 1979.) A final rule was published August 13, 1979 (44 FR 47264).

Authority: Public Utility Regulatory Policies Act, Sections 116 and 309 (Pub. L. 95-617).

Contact: Howard Perry (202) 254-8224.

12. NEA Fuel Use Act—Grants to State Offices of Consumer Services

ERA (Office of Utility Systems) will revise guidelines for grants to state offices of consumer services for representation of consumers in proceedings before electric utility regulatory commissions.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was issued March 21, 1979. (44 FR 18448, March 27, 1979.) Final rule issued June 29, 1979 (44 FR 40044, July 6, 1979).

Authority: Energy Conservation and Production Act, Public Utility Regulatory Policies Act, ECPA, Section 205 (Pub. L. 94-385) as amended by Section 142 (Pub. L. 95-617).

Contact: Larry Kaseman (202) 254-8266.

13. NEA Fuel Use Act—Grant Assistance to Public Utility Commissions and Innovative Utility Regulatory Projects

ERA (Office of Utility Systems) will promulgate regulations to provide grant assistance to public utility commissions in meeting the electric utility and natural gas provisions of the Public Utility Regulatory Policies Act and to fund innovative utility rate structure projects.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was issued on March 21, 1979. (44 FR 18856, March 29, 1979.) Final rule issued June 29, 1979. (44 FR 40262, July 9, 1979).

Authority: Public Utility Regulatory Policies Act, Sections 141 and 142 (Pub. L. 95-617).

Contact: Larry Kaseman (202) 254-8266.

Crude Oil

1. Simplified Crude Oil Price Control Program (ERA Docket ERA-R-12)

DOE has proposed the first step in a program to simplify the mechanism for controlling crude oil prices. The program will shift the entitlement burden to first purchasers, thereby eliminating the

opportunity for resellers to falsely recertify the price tier.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was published January 25, 1979 (44 FR 5296). A final rule, if adopted, may incorporate ERA-R-78-13.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Daniel Thomas (202) 254-7477.

2. Deregulation of Heavy Crude Oil Pursuant to Executive Order No. 12153 (ERA-R-39)

DOE is conducting a public inquiry to determine whether the Secretary of Energy should recommend to the President the inclusion of any crude oil not included under the current definition of "heavy crude oil" in Section 1-101 of the Order.

A regulatory analysis is not required.

Status: A notice of inquiry was published August 23, 1979 (44 FR 49490). Hearings have already been held.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: William Carson or Douglas Harnish (202) 254-7477.

3. Phased Deregulation of Upper Tier Crude Oil (ERA-R-79-41)

ERA is proposing amendments to the crude oil pricing regulations to implement the President's decision to gradually deregulate Domestic Upper Tier Crude Oil prices beginning January 1, 1980 and ending October 1, 1981. The proposal would permit market prices to be charged for first sales of a steadily increasing percentage of what would otherwise be upper tier crude oil produced from each property.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was published August 29, 1979 (44 FR 50605). Hearings will be held.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: William Carson or Douglas Harnish (202) 254-7477.

4. Incentives for Enhanced Crude Oil Recovery (ERA Docket ERA-R-77-1)

DOE will provide additional price incentives needed for tertiary enhanced recovery projects in order to provide for adequate up front capital commitment to such projects.

A regulatory analysis has been completed.

Status: A final rule was published August 30, 1979 (44 FR 51148).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Douglas Harnish (202) 254-7477.

5. Incentive Prices for Newly Discovered Crude Oil (ERA-R-78-26)

DOE has issued a rule which would permit "newly discovered crude oil" to receive market price levels.

A regulatory analysis will be completed.

Status: A final rule was published May 2, 1979 (44 FR 25828).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: William Carson (202) 254-7477.

6. Newly Discovered Crude Reporting Rule

DOE proposes to promulgate mechanics for certification procedures and to clarify technical parts of the final rule on newly discovered oil.

A regulatory analysis is not required.

Status: No notice concerning the regulation has been published.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: William Carson or Douglas Harnish (202) 254-7477.

7. Marginal Wells-Extension of One-Time Certification (ERA Docket ERA-R-78-18A)

DOE proposed amendments to the Mandatory Petroleum Price Regulatons designed to provide crude oil producers with a one-time option to update the base production control level or the unit base production control level for any domestic property.

A regulatory analysis is not required.

Status: The final rule has been drafted and is currently awaiting signature by the Secretary. Hearings will not be held.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Douglas Harnish or William Carson (202) 254-7477.

8. Marginal Wells, Extend Depth Brackets

DOE proposes to extend depth bracket/production rate allowances consistent with current rule (ERA-R-78-18).

A regulatory analysis is not required.

Status: No notice concerning the regulation has been published.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: William Carson or Douglas Harnish (202) 254-7477.

9. Small Stripper Certification Procedure

DOE has established a voluntary procedure for small crude oil stripper producers to apply for a determination as to whether their wells qualify as stripper wells.

A regulatory analysis is not required.

Status: The form was issued on August 2, 1979.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 95-159, as amended.

Contact: John Marks (202) 632-8761.

10. Processing Agreements

DOE is considering whether to provide further guidance to resellers and refiners concerning the treatment of crude oil processing agreements under the Mandatory Petroleum Price Regulations.

It has not been decided whether a regulatory analysis is required.

Status: No notice concerning the regulation has been published.

Authority: Energy Policy and Conservation Act, Pub. L. 94-163, as amended.

Contact: Daniel Thomas (202) 254-7477.

11. Crude Resellers, Further Price Rule

Additional rules to govern the sales of crude oil by resellers will be proposed.

A regulatory analysis is not required.

Status: No notice concerning the regulation has been published.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Dan Thomas (202) 254-7477.

12. Transfer Pricing and Ocean Transportation

DOE is considering simplification or possible revision of the standby regulations, and whether to maintain continuing information gathering system to implement rules regulating prices of inter-affiliate transfers of imported crude oil.

It has not been decided whether a regulatory analysis is required.

Status: No notice concerning the regulation has been published.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Daniel Thomas (202) 254-7477.

13. Revision of the Small Refiner Bias (ERA Docket ERA-R-78-3)

DOE has amended the small refiner bias program, based on its determination that the financial benefits to small refiners under the small refiner bias program were higher than warranted and consequently overcompensated small refiners for relatively higher costs of operation vis-a-vis large refiners.

A regulatory analysis has been completed.

Status: A final rule was issued April 27, 1979 (44 FR 25621, May 2, 1979).

Authority: EPAA of 1973, Pub. L. 93-159, as amended.

Contact: Mary B. Jones (202) 632-5133.

14. Non-Refining Uses of Price Controlled Crude Oil (ERA Docket ERA-R-78-13)

DOE is evaluating the feasibility of amendments proposed in November 1978 to include in the entitlements program crude oil not presently covered.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was issued November 1, 1978 (43 FR 52104, November 8, 1978). DOE will determine whether to issue a final rule or to discontinue this rulemaking.

Authority: EPAA of 1973 Pub. L. 93-159 as amended.

Contact: Mary B. Jones (202) 632-5133.

15. Inclusion of Additional Petroleum Substitutes in the Entitlements Program (ERA-R-79-28)

DOE is proposing amendments to provide for the automatic inclusion in the crude oil entitlements program of solid municipal waste and solid derivatives thereof used as fuel, the coal component of a slurry of coal and petroleum products, alcohol derived from biomass when mixed with gasoline to produce gasohol, shale oil used for non-refining purposes, the wood component of mixtures of processed wood and petroleum product, and methane derived from municipal sewage or landfills.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published June 5, 1979 (44 FR 32225).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Norman Breckner (202) 254-7477.

16. Emergency Allocation Provisions of the Crude Oil Buy/Sell Program (ERA-R-79-21)

The 15 refiner-sellers under the program contend that the substantial increases in emergency allocations have caused them undue hardship in terms of reduced refinery utilization and unrecovered costs for crude sales imposed on them. The proposed amendments would (1) add the seven largest independent refiners (refining capacity in excess of 175,000 bbd) to the seller's list, for purposes of emergency allocations only, and (2) provide that, with respect to emergency allocations, the price of crude sold to small refiners whose refining capacity is more than 50,000 bbd would be based on the actual cost of the crude oil sold, rather than the seller's adjusted weighted average landed cost of imports, as currently provided.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was issued on April 27, 1979 (44 FR 26113, May 4, 1979).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: John Glynn (202) 632-9290.

17. Revision of Crude Oil Supplier/Purchaser Rule

DOE is expanding its evaluation of this rule in light of the phased removal of price controls from domestic crude oil scheduled to occur between now and October 1981. DOE will determine what revisions may be required to the freeze on supplier/purchaser relationships to be consistent with the gradual removal of controls on domestic crude oil.

A regulatory analysis will be completed.

Status: No notice concerning a regulation on this matter has been published.

Authority: EPAA of 1973, Pub. L. 93-159, as amended.

Contact: Mary B. Jones (202) 632-5133.

18. Canadian Allocation Program (CAP) Revisions (ERA Docket ERA-R-78-23)

On November 17, 1978, DOE issued a notice of proposed rulemaking regarding revisions to the CAP (43 FR 55734, November 28, 1978). The proposed amendments were intended to reflect the declining volumes of Canadian crude oil exports, the varying success refineries have had in finding non-Canadian supplies and the simplification of the administration and industry reporting requirements of CAP. In August 1979 DOE determined that any changes in the CAP at this time might exacerbate the already fragile supply and demand balance for crude oil and petroleum products in the Northern Tier; consequently, DOE Issued a notice deferring action on a final rule until at least early 1980.

A regulatory analysis will not be completed.

Status: A notice of intent to defer issuance of a final rule was issued August 9, 1979 (44 FR 47951, August 16, 1979).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: John Glynn (202) 632-5133.

19. Incentives for Refinery Investment (ERA-R-79-42)

ERA invited comments on the need to amend the pricing regulations to enhance the ability of refiners to recover as a non-product cost an annual rate of return on new refinery investments.

A regulatory analysis is not required.

Status: A notice of public hearing was issued on August 23, 1979 (44 FR 50847, August 30, 1979).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Edwin P. Mampe or Chuck Boehl (202) 254-7200.

20. Amendments to the Entitlements Program With Regard to Residual Fuel Oil Imports

DOE issued an emergency amendment June 10, 1979 (44 FR 34468, June 15, 1979) extending the program in effect through December 31, 1979. Importers of residual fuel oil into the East Coast market receive 50% of an entitlements runs credit while domestically produced residual fuel oil shipped on foreign tankers incurs a loss of 50% of an entitlements runs credit.

A regulatory analysis has been completed.

Status: Final rule issued June 10, 1979 (44 FR 34468, June 15, 1979).

Authority: Department of Energy Appropriations Act of 1979 (Pub. L. 95-465). Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159, as amended).

Contact: Josette L. Maxwell (202) 632-5133.

21. Procedures for Certification of the Use of Natural Gas for Fuel Oil Displacement (ERA Docket ERA-R-79-16)

DOE has issued a final rule (10 CFR Part 595) establishing the procedures for the ERA Administrator's certification to the FERC that the natural gas purchased directly by end-users would be used to displace fuel oil and not coal.

A regulatory analysis was completed.

Status: A final rule was published August 16, 1979 (44 FR 47920).

Authority: Department of Energy Act (Pub. L. 95-91).

Contact: David A. Eaton (202) 254-8202.

22. Transportation Certificates for Fuel Oil Displacement Gas (No ERA Docket Number) (FERC Docket No. RM79-34)

DOE/ERA proposed a rule for adoption by the Federal Energy Regulatory Commission (FERC) under which the FERC would accept and consider applications from interstate pipeline companies for certificates to transport natural gas purchased by end-users to displace fuel oil.

A regulatory analysis was not required.

Status: FERC generally adopted the ERA proposal and issued final rules in Order 30 (May 17, 1979) and Order 30-A (September 9, 1979).

Authority: Natural Gas Act of June 21, 1938 (52 Stat. 821) as amended;

Department of Energy Organization Act of 1977, Pub. L. 95–91, Section 403.

Contact: FERC, Kenneth Plumb (202) 275–4166.

23. Assignment of Base Period Supplier: Notice to Aggrieved Parties

The DOE is proposing procedures to facilitate the required notice provisions for new assignments, adjustments and orders it issued.

A regulatory analysis is not required.

Status: A Notice of Proposed Rulemaking will be issued.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: William E. Caldwell (202) 254–8034.

24. Annual Revision of Fee-Free Licenses under the Mandatory Oil Import Program

Annual revision of the Mandatory Oil Import Program to reflect the fee-free allocation levels established by Presidential Proclamation 3279 for the allocation year beginning May 1, 1980.

A regulatory analysis is not required.

Status: Pending decisions on a new import quota mechanism to replace the Mandatory Oil Import Program, no action will be taken.

Authority: Presidential Proclamation 3279.

Contact: Josette Maxell (202) 632–5133.

Refined Products

1. Price Rules for Product Exchanges (ERA Docket ERA-R-77-17

DOE will revise the procedures by which refiners, resellers and retailers will determine the increased costs applicable to products received in exchanges.

A regulatory analysis will not be completed.

Status: Interim regulation and notice of public hearing were published December 15, 1978 (43 FR 59810, December 21, 1978).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Dan Thomas (202) 254–7477.

2. Propane Increased Non-Product Costs (ERA-R-79-33)

DOE proposes increasing the cents-per-gallon passthrough of increased non-product costs permitted small retailers of propane, to increase the categories of increased non-product costs which may be passed through by large resellers and retailers of propane, to modify the refiner price rules which allegedly restrict their prices below those of their competitors.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was published on July 10, 1979 (44 FR 40324).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Roger Miller, (202) 632–6580.

3. NGI Price Amendments—Further Rule (ERA Docket ERA-R-77-5)

DOE has issued a rule to provide gas processors with passthroughs of actual non-product cost increases. DOE has issued an order suspending from the rule certain terminology regarding transfer pricing under Subpart K that became effective November 1, 1978. DOE may propose further notice or notices on a number of additional matters raised in prior proceedings to determine if additional rulemakings are needed.

A regulatory analysis will not be completed.

Status: The suspension order was issued October 30, 1978 (43 FR 50842 (October 31, 1978)). No further notice concerning the regulation has yet been published.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Roger Miller, (202) 632–6580.

4. NGL Allocation Revision (ERA-R-77-9)

DOE is amending the mandatory petroleum allocation regulations to correct various problems that have arisen in the allocation of propane, butane and natural gasoline.

A regulatory analysis is not required.

Status: A final rule was published October 19, 1979 (44 FR 60638). Hearings were held.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Robert Reinstein, (202) 632–8492.

5. Puerto Rican Naphtha Entitlements Program Revisions

ERA has been petitioned by the Puerto Rican Government and petrochemical industry to revise the naphtha entitlements program. They contend that the present program has not enabled an equalization of their naphtha feedstock costs with those of their competitors on the mainland. ERA intends to issue a notice of proposed rulemaking to alleviate this situation provided the regulatory analysis, that is currently being performed, demonstrates a need to issue such a notice.

A regulatory analysis will be completed.

Status: No notice of proposed rulemaking has been issued.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: John Glynn, (202) 632–5133.

6. Middle Distillates Allocation: Special Middle Distillate Set-Aside Procedures (ERA-R-78-20)

The Economic Regulatory Administration of the DOE, on January 12, 1979, amended the petroleum allocation regulations by adoption of Special Rule No. 6, which reinstated special middle distillate set-aside procedures through March 1979. Subsequently, the DOE adopted Special Rule No. 7, which extended the set-aside indefinitely.

A regulatory analysis will not be completed.

Status: A Final Rule was adopted on May 31 (44 FR 32196, June 5, 1979).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Robert Arcuri, (202) 254–7201.

7. Priorities for Distillate Allocations (Surface Passenger Mass Transit) (ERA-R-79-25)

DOE proposed Special Rule 9 to recognize priority uses of diesel fuel, especially surface passenger mass transit. It is due to expire January 31, 1980. The DOE is proposing to make the effectiveness of Special Rule 9 indefinite.

A regulatory analysis is not required.

Status: No Notice of Proposed Rulemaking has been issued.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: William E. Caldwell, (202) 254–8034.

8. Mandatory Production Levels for Middle Distillates (ERA-R-79-37)

DOE wishes to assure adequate supplies of middle distillates during periods of high demand by required production quotas.

No regulatory analysis is required.

Status: Notice of Proposed Rulemaking issued July 30, 1979.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Gerald P. Emmer, (202) 254–7200.

9. Entitlements Export Sales Deduction Exemption for Bunker Use of Middle Distillates

ERA was petitioned to establish a rule that an entitlements deduction under the export sales provisions of § 211.67(d)(2) not be required for middle distillates used as bunker fuels. ERA has determined that such a rule would not be appropriate in light of the current middle distillate supply situation and

the need to build up distillates stock for the winter of 1979–80.

A regulatory analysis will not be completed.

Status: ERA has decided not to undertake this rulemaking in view of the generally tight distillate supply situation that developed during 1979.

Contact: Mary B. Jones, (202) 632–5133.

10. National Ceiling Price for Motor Gasoline

DOE has determined not to take further action on the establishment of a national ceiling price or prices for motor gasoline and is deleting this matter from the agenda of regulations.

A regulatory analysis will not be completed.

Status: No notice concerning this regulation will be issued.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Edwin Mampe, (202) 254–7200.

11. Deletion of DOE Octane Posting Requirements (ERA Docket ERA–R–79–8)

DOE amended its petroleum price regulations concerning the posting of octane numbers by retail gasoline dealers.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking was issued February 16, 1979 (44 FR 11237, February 28, 1979). A final rule was issued June 1, 1979 (44 FR 32645, June 7, 1979).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Maurice G. Boehl (202) 254–7200.

12. Unleaded Gasoline Price Rules (ERA Docket ERA–R–79–17)

DOE has proposed to amend its petroleum price regulations to: (1) Require service station operators to inform the public of outages of a particular grade of gasoline, (2) Require retailers to inform the public of the price of unleaded gasoline with the same visibility and prominence as the leaded grade; and (3) Impose a maximum mandatory price differential between leaded and unleaded gasoline.

A regulatory analysis decision has not been made.

Status: A notice of proposed rulemaking was published April 11, 1979 (44 FR 21651).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Maurice G. Boehl (202) 254–7200.

13. Unleaded Gasoline Production Incentives (ERA–R–79–30)

ERA proposed three amendments to encourage refiners to increase the production of unleaded gasoline: (1) A "production incentive" for increased production of unleaded gasoline, (2) To recoup the total increased cost of additives including process chemicals attributable to gasoline on sales of gasoline, and (3) To delete the "nearest octane number" provision in § 212.112(b)(1) and to require May 15, 1973 selling prices for unleaded gasoline be computed using the weighted average May 15, 1973 selling price for all leaded gasoline regardless of octane number.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was published June 6, 1979 (44 FR 32622).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Chuck Boehl or Edwin Mampe (202) 254–7200.

14. Equal Application Rule and Allocation of Increased Cost at Retail Level (ERA–R–78–32–C)

DOE proposes to amend the equal application rule to remove regulatory constraints which could result in refiners and resellers selling gasoline at retail prices substantially below those of independent retailers.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was issued September 17, 1979 (44 FR 54902, September 21, 1979). Public Hearings will be held October 18 and 23, 1979.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Chuck Boehl or Edwin Mampe (202) 254–7200.

15. Marketing Profit Margin Adjustments for Gasoline Refiners and Resellers

DOE proposes to study the feasibility of increasing the current marketing costs permitted to be passed through in the price of motor gasoline.

A regulatory analysis will be completed.

Status: No Notice concerning this regulation has been published.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Chuck Boehl (202) 254–7200.

16. Profit Margin Adjustments for Gasoline Resellers

DOE proposes to study the feasibility of increasing the current margin on wholesale sales of motor gasoline.

A regulatory analysis will be completed.

Status: No notice concerning this regulation has been published.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Chuck Boehl (202) 254–7200.

17. Motor Gasoline Minimum Purchase Rule

DOE adopted a Special Rule No. 2 to assure that DOE's price regulations would not impose any barrier to state enactment of minimum purchase requirements relating to retail gasoline sales.

A regulatory analysis will not be completed.

Status: Amendment to extend indefinitely Special Rule No. 2 to Part 212 was published October 4, 1979 (44 FR 57099).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Chuck Boehl (202) 254–7200.

18. Allocation of Unleaded Gasoline for Gasohol

DOE seeks to increase the supply of motor gasoline by encouraging the use of gasohol as a blending stock.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking is being developed.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: James Berry (202) 254–8034.

19. Motor Gasoline Allocation Base Period and Adjustments (ERA–R–79–23B)

The Economic Regulatory Administration of the DOE issued a final rule, effective September 1, 1979 and request for comments which permanently established a new base period, continued the unusual growth adjustment mechanism, provided for a downward adjustment procedures, and ruled that state set-aside volumes will not create supply obligations. This rule was issued on July 15, 1979. A correction which included wholesale purchaser-consumers and bulk purchases within the purview of the downward adjustment procedure was issued on July 19. On August 22, DOE issued a notice of deferral to October 1 for the downward adjustment provision and subsequently on September 11 DOE issued a final rule (44 FR 54041, September 18, 1979) deferring its effective date and a notice of intent to issue a proposed rule and set a public date.

A regulatory analysis is not required.

Status: No subsequent notice concerning this regulation has yet been published.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Robert Arcuri (202) 254–7201.

20. Motor Gasoline Allocation: Downward Certification Adjustments (ERA–R–79–23B)

The Economic Regulatory Administration of the DOE issued, on July 15, 1979 (44 FR 42549, July 19, 1979), a final rule which, among others, adopted a downward certification and adjustment provision. On July 19 (44 FR 43458, July 25, 1979) DOE issued a correction to the rule which provided for inclusion of wholesale purchaser-consumers and bulk purchasers, as well as wholesale purchasers-resellers. Subsequently, DOE deferred the effective date of September 1 to October 1 and on September 11, a final rule was issued which deferred the effective date until issuance of a notice of proposed rulemaking which would establish a corollary public hearing date.

A regulatory analysis will not be completed.

Status: A notice of proposed rulemaking will be issued.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Robert Arcuri (202) 254–7201.

Deregulation

1. Motor Gasoline Exemption

The DOE will decide whether to proceed with deregulation of motor gasoline. An Environmental Impact Statement has been published.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking has been issued and the exemption has been considered by the Federal Energy Regulatory Commission.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Robert Arcuri (202) 254–7201.

2. Deregulation of Butane and Natural Gasoline (ERA Docket ERA–R–79–14)

DOE has proposed a rule to exempt butane and natural gasoline from allocation and price controls. However, the regulatory analysis is being updated because of substantial changes in price and supply data.

A draft regulation analysis has been completed.

Status: A notice of proposed rulemaking was issued on March 28, 1979 (44 FR 19423, April 3, 1979).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Robert Reinstein (202) 632–8494.

3. SNG Feedstocks

DOE will consider whether to issue a proposal to exempt SNG feedstocks from allocation controls.

It has not been determined whether a regulatory analysis is required.

Status: In light of the continued availability of natural gas supplies DOE has decided not to issue a proposal in the near future.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Bob Reinstein (202) 632–8494.

4. Deregulation of Propane (ERA–R–79–3)

DOE is considering whether to exempt propane from allocation and price controls.

A regulatory analysis has been completed.

Status: A notice of inquiry was published February 7, 1979 (44 FR 7934).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, as amended.

Contact: Roger Miller (202) 632–6580.

Emergency Preparedness

1. International Oil Allocation ERA–R–78–7

DOE has adopted a final rule to implement the oil sharing provisions of the International Energy Program.

A regulatory analysis will not be completed.

Status: A final rule was published on May 14, 1979 (44 FR 27969).

Authority: EPAA, Pub. L. 93–149, as amended by Section 251 of the EPCA (Pub. L. 94–163).

Contact: Josette Maxwell (202) 632–5133.

2. Standby Gasoline Rationing Plan

On March 1, 1979, the President transmitted a standby gasoline rationing plan to Congress for approval. The plan was rejected by the House of Representatives on May 10, 1979. The President called upon Congress to develop a plan that could be placed in standby status. A joint congressional conference committee has now completed markup of the Emergency Energy Conservation Act (EECA), which provides new legislative authority for development of another gas rationing plan. The bill calls for expedited development and transmittal of the plan. The President will be required to transmit a progress report to Congress within 120 days of enactment of the bill, followed by another progress report 90 days later, unless the plan has been completed.

A regulatory analysis will not be completed.

Status: Upon passage of EECA, the Department will undertake the formulation of a plan in accordance with provisions of the Act.

Authority: Energy Policy and Conservation Act of 1975 (Pub. L. 94–163).

Contact: Benton F. Massell (202) 632–6500.

3. Standby Crude Oil Pricing & Allocation Regulations (ERA Docket ERA–R–78–4)

DOE adopted changes to the standby crude oil pricing and allocation regulations on January 8, 1979 and continued the rulemaking to receive further comments and determine if further changes are necessary.

A regulatory analysis will not be completed.

Status: A final rule was published on January 16, 1979 (44 FR 3418). DOE is not contemplating further changes at present, but will review these periodically in conformity with procedures for all standby regulations.

Authority: EPAA of 1973, Pub. L. 93–159 as amended.

Contact: Josette Maxwell (202) 632–5133.

4. Standby Product Pricing and Allocation Regulations

DOE issued a final rule January 12, 1979 adopting short-term standby regulations. Comments have been received and studies are underway for the development of comprehensive standby product pricing and allocation regulations.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was published on January 18, 1979 (44 FR 3928).

Authority: EPAA of 1973, Pub. L. 93–159, as amended.

Contact: William E. Caldwell (202) 254–8034.

5. Standby Energy Conservation Plans

The Emergency Weekend Gasoline Sales Restrictions and the Emergency Advertising Lighting Restrictions plans were developed by ERA and transmitted by the President to Congress on March 1, 1979.

A regulatory analysis has been completed.

Status: The plans were rejected by Congress. No further work on these plans is anticipated.

Authority: Energy Policy and Conservation Act of 1975, Pub. L. 94–163.

Contact: Benton Massell (202) 632–6500.

6. Activation Order No. 1—Standby Petroleum Product Allocation Regulations

The Economic Regulatory Administration of the DOE activated a

limited portion of its standby Petroleum Product Allocation Regulations to update the base period for motor gasoline. The initial action covered the period of March through May 1979 and Guidelines to the Activation Order were also issued. A notice of intent to continue the rule through September 1979 and establish a substitution provision was subsequently issued on April 17, 1979. On May 1, DOE issued an interim final rule updating the prior base period and providing for an unusual growth provision through September 30, 1979.

A regulatory analysis was not required.

Status: A final rule published on July 19, 1979 (44 FR 42549) which subsumed this rulemaking.

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Robert Arcuri, (202) 254-7201.

7. Amendments to the Entitlements Program to Permit Purchase of SPR Crude Oil at Lower Tier Prices

DOE has evaluated the feasibility of amending the entitlements program to permit purchase of crude oil for the SPR at lower tier prices.

Status: DOE has determined it will not undertake a rulemaking on this matter.

Contact: Josette Maxwell, (202) 632-5133.

8. Amendment to the Standby and Current Crude Oil Allocation and Refinery Yield Programs to Provide for the Distribution of SPR Crude Oil

DOE is considering possible amendments to both the Standby and current crude oil allocation programs to permit distribution of SPR crude oil should the Secretary determine use of SPR crude oil is required due to a supply interruption and that such SPR crude oil will not be sold competitively. DOE will present for congressional review a SPR distribution plan. Subsequently, ERA will issue any regulations necessary to implement the SPR Distribution Plan approved by Congress.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published August 20, 1979 (44 FR 48696). DOE expects to issue a final rule within the next six months.

Authority: Emergency Petroleum Allocation Act of 1975, Pub. L. 94-163.

Contact: Josette L. Maxwell, (202) 632-5133.

9. Motor Gasoline Allocation: Amendments to Extend Special Retailers Provision of Motor Gasoline State Set-Aside Program and to Increase State Set-Aside Volume to Five Percent (ERA-R-79-15)

The Economic Regulatory Administration of the DOE adopted, on April 19, 1979, a new Special Rule No. 8 which allows states to provide gasoline from the set-aside program to retail outlets. On May 25, DOE extended the rule through September and increased the set-aside level to five percent from the previous three percent (Docket No. ERA-R-79-15). On September 28, the DOE issued a final rule extending Special Rule No. 8 indefinitely.

A regulatory analysis will not be completed.

Status: A final rule was adopted on September 28, 1979 (44 FR 57067, Oct. 4, 1979).

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended.

Contact: Robert Arcuri, (202) 254-7201.

10. Defense Production Act Regulations

DOE has the authority to implement the Defense Production Act through use of its allocation authority.

A regulatory analysis will not be completed.

Status: No notice of proposed rulemaking has yet been published.

Authority: Defense Production Act of 1950, 50 U.S.C. 2071.

Contact: William E. Caldwell, (202) 254-8034.

Utility Systems

Authorization to Transmit Electric Energy to a Foreign Country

Section 202(e) of the Federal Power Act requires that any jurisdictional electric utility obtain an authorization from the Secretary of Energy prior to exporting electric energy to a foreign country. This authority has been delegated to the Assistant Administrator for Utility Systems, ERA. Currently this regulatory requirement is being handled under the provision of 18 CFR para. 32.30 thru 32.38. Since 18 CFR contains only FERC rules, the rules for this regulatory action must be added to 10 CFR. Certain revisions to simplify and to cause the rules to comply with current authority are also necessary.

A regulatory analysis decision has not been made.

Status: No Notice of Proposed Rulemaking has yet been published.

Authority: Federal Power Act Section 202(e).

Contact: Jim Brown (202) 254-8247.

2. Presidential Permit for Electric Power Lines Crossing International Boundaries

Executive Order 10485 as amended requires that any person obtain approval of the Secretary of Energy prior to constructing an electric power line across an international boundary. This authority (called a Presidential Permit) has been delegated to the Administrator of ERA. Currently, this regulatory requirement is being handled under the provisions of 18 CFR para. 32.50 thru 32.52. Since 18 CFR contains only FERC rules, the rules for this regulatory action must be added to 10 CFR. Certain revisions for simplifying are also necessary.

A regulatory analysis decision has not been made.

Status: No Notice of Proposed Rulemaking has yet been issued.

Authority: Executive Order 10485 as amended by Executive Order 12038; Sec. 202(e), Federal Power Act.

Contact: Jim Brown (202) 254-8247.

3. Electric Power System Outage and Incident Reporting

Electric utilities currently report certain bulk power system outages, disturbances, load reduction actions and other significant events to ERA. These reports are made as required by 18 CFR para. 141.158. Since 18 CFR contains FERC rules and this is an ERA program the reporting requirements need to be placed in 10 CFR. Certain changes in the requirements to meet current program needs are also required.

A regulatory analysis decision has not been made.

Status: No Notice of Proposed Rulemaking has yet been published.

Authority: Federal Power Act Section 202(a).

Contact: Jim Brown (202) 254-8247.

[FR Doc. 79-34449 Filed 11-8-79; 8:45 am]
BILLING CODE 6450-01-M

Federal Register

Friday
November 9, 1979

Part III

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29. CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 224-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

New Jersey NJ79-3045

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.

District of Columbia	DC79-3039	October 19, 1979
Florida	FL79-1017	January 26, 1979
	FL79-1030	February 9, 1979
	FL79-1039	February 16, 1979
	FL79-1064	April 13, 1979
	FL79-1069	April 20, 1979
	FL79-1109	July 20, 1979
	FL79-1110	July 20, 1979
Kentucky	KY79-1023	February 2, 1979
Louisiana	LA79-4069	July 20, 1979
	LA79-4070	August 17, 1979
Maryland	DC79-3039	October 19, 1979
	MD79-3010	May 11, 1979
Massachusetts	MA78-2081	September 22, 1978
Mississippi	MS79-1119	August 17, 1979
New Hampshire	NH79-2041	May 11, 1979
	NH79-2040	May 11, 1979
Pennsylvania	PA79-3012	May 18, 1979
Texas	TX79-4005	January 5, 1979
	TX79-4032	March 16, 1979
	TX79-4034	July 13, 1979
	TX79-4036	March 16, 1979
	TX79-4048	March 16, 1979
	TX79-4050	March 16, 1979
Virginia	DC79-3039	October 19, 1979
	VA78-3073	October 13, 1978
	VA78-3076	November 3, 1978
	VA78-3075	November 3, 1978
	VA78-3074	November 3, 1978

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas Decision numbers are in parenthesis following the numbers of the decisions being superseded:

Alabama	AL79-1080 (AL79-1134)	May 4, 1979
Kentucky	KY79-1021 (KY79-1143)	Feb. 2, 1979
Missouri	MO79-4063 (MO79-4094)	May 11, 1979
Virginia	VA78-3038 (VA79-3049)	April 20, 1979
	VA78-3058 (VA79-3050)	Aug. 4, 1979
	VA78-3057 (VA79-3051)	Aug. 4, 1979

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 2nd day of November 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

NEW DECISION

STATE: NEW JERSEY COUNTY: CAMDEN
DECISION NO : NJ79-3045 DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
AIR CONDITIONING AND HEATING MECHANIC	$ 6 13				
BRICKLAYERS	7.91				
CARPENTERS	7.34				
CEMENT MASONS	7.42				
DRYWALL FINISHERS	7.16				
DRYWALL HANGERS	7.00				
ELECTRICIANS	5.67				
INSULATION INSTALLERS	4.50				
IRONWORKERS	5 50				
LABORERS:					
Laborers	4 39				
Mason Tenders	6.00				
PAINTERS	8.13				
PLASTERERS	6.50				
PLUMBERS	8.67				
ROOFERS	8.84				
SHEET METAL WORKERS	6.50				
SOFT FLOOR LAYERS	7.00				
TILE SETTERS	10.00				
TRUCK DRIVERS	5.50				
POWER EQUIPMENT OPERATORS:					
Backhoe	5.50				
Bulldozer	6.50				
Forklift Operator	5.50				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(ii)).

MODIFICATION PAGE #1

DECISION NO. DC79-3039
MOD # 1
(44 FR 60513 October 19, 1979)

District of Columbia, Maryland - Montgomery & Prince Georges; & D.C. Training School; Virginia - Independent City of Alexandria, Arlington & Fairfax Counties

CHANGE:
Heavy Construction excluding water & sewer lines:
All Counties
Building Construction:
Excluding Alexandria, Va.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Glaziers	$12.23	.71	.70		.05
Carper Layers	8.30	.30			.05
Electricians	12.65	.70	3%+.80		.13
Line Construction:					
Linemen, Cable Splicers					
Equipment Operators	13.61	.60	3%		½%
Truck with Winch, pole or steel handling	7.96	.60	3%		.08
Sprinkler Fitters	13.38	.75	1.05		.08

MODIFICATION PAGE #2

DECISION #FL79-1017 - Mod. #5 (44 FR 5604 - January 26, 1979) Duval County, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Piledrivers	$10.65	.60	.70		.10
Plasterers	9.00	.40	.30		
DECISION #FL79-1030 - Mod. #5 (44 FR 8394 - February 9, 1979) Broward County, Florida					
Omit:					
Laborers:					
Air tool operators; Mason tenders; Mortar mixers; Pipelayers	6.70	1.10	.37		
Plasterers' tenders	6.88	1.10	.37		
Unskilled	6.60	1.10	.37		
Add:					
Laborers (Permit Value $500,000 and over):					
Air tool operators; Mason tenders; Mortar mixers; Pipelayers	7.50	1.07	.50		
Plasterers' tenders	7.68	1.07	.50		
Unskilled laborers	7.40	1.07	.50		
Laborers (Permit Value up to $500,000):					
Air tool operators; Mason tenders; Mortar mixers; Pipelayers	5.80	1.07	.50		
Plasterers' tenders	5.98	1.07	.50		
Unskilled laborers	5.70	1.07	.50		
Change:					
Carpenters; Soft Floor Layers	10.10	.90	.55		.08
Ironworkers	10.00	.85	.73		.10
Millwrights	11.27	.60	.70		.10
Piledrivers	10.65	.60	.70		.10
Sheet Metal Workers	12.41	.75	.24 + .50		.11

MODIFICATION PAGE #3

DECISION #FL79-1039 - Mod. #4 (44 FR 10228 - February 16, 1979) Volusia County (except Cape Kennedy Space Flight Center and Cape Canaveral Air Force Station, Florida)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Carpenters	$ 8.78	.50	.65		.07
Ironworkers	10.28	.65	.90	.65	.05
Laborers:					
Air tool operators; Mason tenders; Mortar mixers; Pipelayers (concrete & clay); Plasterers' tenders	7.05	.25	.10		
Unskilled laborers	6.99	.25	.10		
Millwrights	11.27	.60	.70		.10
Soft floor layers	8.78	.50	.65		.07
DECISION #FL79-1064 - Mod. #5 (44 FR 22308 - April 13, 1979) Orange County, Florida					
Change:					
Asbestos Workers	12.10	.55	.45		.06
Electricians	10.66	.55	3% + .44		1%
Tile and Terrazzo Workers	9.20	.50	.40		.04

MODIFICATION PAGE #4

DECISION #FL79-1069 - Mod. #2 (44 FR 23735 - April 20, 1979) Leon County, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Electricians	$9.20	.55	3%		0.5%
Sheet Metal Workers	8.75	.90	.60		.08
DECISION #FL79-1109 - Mod. #1 (44 FR 42856 - July 20, 1979) Martin & Palm Beach Counties, Florida					
Omit:					
LABORERS:					
Air tool operators; Mason tenders; Mortar mixers and Pipelayers	6.70	1.10	.37		
Plasterers' tenders	6.88	1.10	.37		
Unskilled laborers	6.60	1.10	.37		
Add:					
LABORERS: (Permit Value $500,000 and over):					
Air tool operators; Mason tenders; Mortar mixers; and Pipelayers	7.50	1.07	.50		.01
Plasterers' tenders	7.68	1.07	.50		.01
Unskilled laborers	7.40	1.07	.50		.01
LABORERS: (Permit Value up to $500,000):					
Air tool operators; Mason tenders; Mortar mixers and Pipelayers	5.80	1.07	.50		.01
Plasterers' tenders	5.98	1.07	.50		.01
Unskilled laborers	5.70	1.07	.50		.01
Change:					
Bricklayers	10.70	.65	.60		.02
Carpenters; Soft floor layers (All of Martin County and that portion of Palm Beach County north of a line from the Atlantic Ocean along Appleby Street in Boca Raton, west to US #1 to Canal C-15, then west to Palm Beach County line)	10.10	.55	.90		.08

MODIFICATION PAGE #5

FL79-1109 (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change (Cont'd):					
Carpenters:					
Remainder of Palm Beach County	$10.10	.90	.55		.08
Ironworkers	10.65	.60	.73		.10
Millwrights	11.27	.60	.70		.10
Painters:					
Brush	8.83	.55	.90		.05
Paperhanger; Roller	9.08	.55	.90		.05
Spray; Taper	9.33	.55	.90		.05
Pileodrivers	10.65	.60	.70		.10
Sheet Metal Workers	11.50	.70	.48		.04
DECISION #FL79-1110 - Mod. #2 (44 FR 42858 - July 20, 1979 Dade County, Florida					
Change:					
Bricklayers:					
Bricklayers; Cement masons; Marble setters; Plasterers; Stonemasons; Tile & Terrazzo workers	11.15	.70	.70		.07
Carpenters	10.10	.90	.55		.08
Ironworkers	11.00	.98	1.00		.10
Laborers (Permit Value $500,000 and over):					
Air tool operators; Mason tenders; Mortar mixers; and pipelayers	7.50	1.02	.50		
Plasterers tenders	7.68	1.02	.50		
Unskilled laborers	7.40	1.02	.50		
Laborers (Permit Value up to $500,000):					
Air tool operators; Mason tenders; Mortar mixers; Pipelayers	5.80	1.02	.50		
Plasterers' tenders	5.98	1.02	.50		
Unskilled laborers	5.70	1.02	.50		
Millwrights	11.27	.90	.70		.10

MODIFICATION PAGE #6

DECISION #KY79-1023 - Mod. #2
(44 FR 6874 - February 2, 1979)
Boyd County, Kentucky

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos workers	$ 14 15	.50	.70		.03
Carpenters	11.67	.60	1.00		.05
Electricians:					
Wiremen	12.52	.50	3% + 1.02	1.02	.04
Cable splicers	13.15	.50	3% + 1.02	1.02	.04
Laborers:					
Group 1	9.80	.35	.60		
Group 2	9.95	.35	.60		
Group 3	9.97	.35	.60		
Group 4	10.00	.35	.60		
Group 5	10.05	.35	.60		
Group 6	10 30	.35	.60		
Group 7	10.50	.35	.60		
Group 8	11.00	.35	.60		
Group 9					
Painters:					
Brush & paperhanging	10.75		.75		.06
Roller, drywall, & saping	10.75		.75		.06
Spray	10 75		.75		.06
Steamcleaning	10.75		.75		.06
Mittens or rags	10.75		.75		.06
Sandblasting	10.75		.75		.06
Drywall machine operator	10.75		.75		.06
Piledrivermen	11.98	.60	1.00		.05
Plumbers & Pipefitters:					
Area 1	12.22	.75	1.15	1.00	
Area 2	12.42	.75	1.15	1.00	
Area 3	12.62	.75	1.15	1.00	
Area 4	12.72	.75	1.15	1.00	
Power Equipment Operators:					
Class A	11.60	.50	.80		.05
Class B	8.86	.50	.80		.05
Class C	8 09	.50	.80		.05
Sheet metal workers	12.56	1.20	.825		.095
Soft floor layers	11.67	.60	1.00		.05
Sprinkler fitters	13 33	.75	1.05		.08

MODIFICATION PAGE #7

DECISION #LA79-4069-Mod. #4
(44 FR 42860 - July 20, 1979)
Statewide, Louisiana

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asbestos Workers:					
Zone 2	$11 36	.70	.96		.03
Zone 3	10.90	.65	1.30		.05
Bricklayers and Stone-Masons:					
Zone 1	11.55	.80	1.15		.31
Zone 3	12.25	.53	.67		.05
Zone 4	11.60	.50	.35		.035
Zone 6	10.85	.40	.55		
Zone 7	10.50		.30		
Zone 8	11.70		.25		
Carpenters (Building Construction):					
Zone 2:					
Carpenters, Pile-drivermen and Soft floor layers	11.18	.60	.33		.07
Millwrights	12.88				.07
Zone 3:					
Carpenters	10.70	.65	.50		
Millwrights	11 75	65	.50		
Piledrivermen	11.00	.65	.50		
Zone 4:					
Carpenters and Pile-drivermen	11.60	.50	.60		.05
Millwrights	13.325				7/10%
Zone 5:					
Carpenters and Soft floor layers	11.02	.65	.50		.04
Millwrights	11.41	.65	.50		.04
Piledrivermen	11.12	.65	.50		.04
Zone 6:					
Carpenters and Soft floor layers	10 855	.65	.50		.04
Millwrights	11 41	.65	.50		.04
Piledrivermen	11.12	.65	.50		.04

MODIFICATION PAGE #8

DECISION NO. LA79-4069 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Zone 8:					
Carpenters and Soft floor layers	$10.45	.50	.40		.04
Millwrights	11.20	.50	.40		.04
Piledrivermen	10.70	.50	.40		.04
Cement Masons (Building Construction):					
Zone 1	10.71				
Zone 3	9.75	.50	.75		.05
Zone 4	11.045	.45	.40		.04
Zone 6	8.00				
Zone 7	9.90	.35			
Zone 8	10.42		.25		
Zone 9	9.25		.30		
Cement Masons (Highway Construction):					
Zone 7:					
On concrete lined ditches	9.75	.50	.75		.05
Zone 8:					
On concrete lined ditches	9.75	.50	.75		.05
Electricians:					
Zone 2:					
Electricians	11.95	.45	3%		.02
Cable Splicers	12.45	.45	3%		.02
Zone 5:					
Electricians	12.70	.45	3%+.40		.05
Cable Splicers	12.70	.45	3%+.40		.05
Ironworkers (Building Construction):					
Zone 1	11.66	.63	.35		.04
Zone 2	11.69	.45	.75		.04
Zone 3	11.75	.45	.90		.06
Zone 4	11.90	.45	1.15		.06
Zone 6	11.78	.45	.65		.05
Laborers (Building Construction):					
Zone 2:					
Group 1	6.85	.25	.27		.05
Group 2	7.05	.25	.27		.05
Zone 3:					
Group 1	8.38	.25	.27		.05

MODIFICATION PAGE #9

DECISION NO. LA79-4069 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Group 2	$ 8.48	.25	27		.05
Group 3	8.53	.25	.27		.05
Group 4	9.34	.25	.27		.05
Group 5	8.90	.25	.27		.05
Group 6	8.74	.25	.27		.05
Group 7	8.43	.25	.27		.05
Group 8	8.63	.25	.27		.05
Zone 6:					
Group 1	8.40	.25	.27		.05
Group 2	8.50	.25	.27		.05
Group 3	8.65	.25	.27		.05
Group 4	8.56	.25	.27		.05
Group 5	8.66	.25	.27		.05
Zone 7:					
Group 1	8.075	.25	.27		.05
Group 2	8.225	.25	.27		.05
Group 3	8.275	.25	.27		.05
Zone 8:					
Group 1	6.39	.25	.27		.05
Group 2	6.59	.25	.27		.05
Group 3	6.64	.25	.27		.05
Group 4	6.69	.25	.27		.05
Group 5	7.04	.25	.27		.05
Zone 9:					
Group 1	7.03	.25	.27		.05
Group 2	7.13	.25	.27		.05
Group 3	7.18	.25	.27		.05
Group 4	7.23	.25	.27		.05
Zone 10:					
Group 1	6.70	.25	.27		.05
Group 2	6.88	.25	.27		.05
Group 3	7.03	.25	.27		.05
Lathers:					
Zone 1	10.08	.55	.35		.05
Zone 2	10.23	.55	.35		.05
Zone 3	10.48	.55	.35		.05
Zone 4	10.83	.55	.35		.05
Zone 5	11.85				.01
Zone 6	10.60				.01
Zone 8	12.05				

MODIFICATION PAGE #10

DECISION NO. LA79-4069 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Line Construction:					
Zone 1:					
Group 1	$12.70	.45	3%+.40		.05
Group 2	75%JR	.45	3%+.40		.05
Group 3	65%JR	.45	3%+.40		.05
Group 4	45%JR	.45	3%+.40		.05
Group 5	50%JR	.45	3%+.40		.05
Marble, Tile and Terrazzo Workers and Finishers:					
Zone 1:					
Marble Setters	11.60	.50	.35		.035
Tile and Terrazzo Workers	10.65	.40		.20	
Marble, tile and terrazzo finishers	7.90	40		.20	
Zone 4:					
Marble, tile and terrazzo workers	10.67		.25		
Zone 5:					
Marble, tile and terrazzo workers	9.65	.40			
Zone 6:					
Marble, tile and terrazzo workers	13.50				
Marble, tile and terrazzo finishers	7.90	.40		.20	
Zone 7:					
Tile finishers	7.90	.40		.20	
Plasterers:					
Zone 4	11.60				.01
Zone 5	10.08	.60	.35		.08
Zone 6	7.75				.01
Zone 8	11.70		.25		
Zone 9	10.50		.30		

MODIFICATION PAGE #11

DECISION NO. LA79-4069 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
Power Equipment Operators (Building Construction):					
Zone 1:					
Group 1	$ 8.19	.65	.78		.05
Group 2	8.55	.65	.78		.05
Group 3	8.88	.65	.78		.05
Group 4	8.97	.65	.78		.05
Group 5	9.29	.65	.78		.05
Group 6	10.77	.65	.78		.05
Zone 5:					
Group 1	8.56	.65	1.00		.05
Group 2	8.24	.65	1.00		.05
Group 3	8.03	.65	1.00		.05
Group 4	8.84	.65	1.00		.05
Group 5	11.23	.65	1.00		.05
Group 6	9.25	.65	1.00		.05
Group 7	9.93	.65	1.00		.05
Zone 6:					
Group 1	8.41	.65	1.00		.05
Group 2	7.76	.65	1.00		.05
Group 3	7.52	.65	1.00		.05
Group 4	8.08	.65	1.00		.05
Group 5	8.89	.65	1.00		.05
Group 6	10.18	.65	1.00		.05
Group 7	11.41	.65	1.00		.05
Group 8	11.66	.65	1.00		.05
Group 9	11.91	.65	1.00		.05
Group 10	12.16	.65	1.00		.05
Zone 7:					
Group 1	10.88	.65	1.00		.05
Group 2	11.13	.65	1.00		.05
Group 3	7.90	.65	1.00		.05
Group 4	8.29	.65	1.00		.05
Group 5	9.20	.65	1.00		.05
Group 6	10.63	.65	1.00		.05
Roofers:					
Zone 1:					
Roofers	11.13		.20		
Sheet Metal Workers:					
Zone 3	12.47	.55	.80		.16

MODIFICATION PAGE #12

DECISION NO. LA79-4069 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Truck Drivers (Building Construction):					
Zone 3:					
Group 1	$ 7.72				
Group 2	7.80				
Group 3	8.05				
Group 4	8.20				
Group 5	8.35				
Group 6	8.55				
Group 7	8.90				
Zone 5:					
Group 1	8.64	.45			
Group 2	9.25	.45			
Group 3	9.30	.45			
Group 4	9.56	.45			
DECISION #LA79-4070-Mod.#2 (44 FR 48564-August 17, 1979) Bossier, Caddo and Calcasieu Parishes, Louisiana					
Change:					
Asbestos Workers:					
Bossier and Caddo Parishes	$11.36	.70	.96		.03
Bricklayers and Stonemasons:					
Bossier and Caddo Parishes	10.85	.40	.55		
Calcasieu Parish	12.25	.53	.67		.05
Carpenters:					
Bossier and Caddo Parishes:					
Carpenters	10.45	.50	.40		.04
Millwrights	11.20	.50	.40		.04
Piledrivermen	10.70	.50	.40		.04
Calcasieu Parish:					
Carpenters and Piledrivermen	11.18	.60	.33		.07

MODIFICATION PAGE #13

DECISION NO. LA79-4070 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Millwrights	$12.88				.07
Cement Masons:					
Bossier and Caddo Parishes	9.90	.35			
Ironworkers:					
Bossier and Caddo Parishes	11.75	.45	.90		.06
Calcasieu Parish	11.78	.45	.65		.05
Laborers:					
Bossier and Caddo Parishes:					
Group 1	7.03	.25	.27		.05
Group 2	7.13	.25	.27		.05
Group 3	7.18	.25	.27		.05
Group 4	7.23	.25	.27		.05
Calcasieu Parish:					
Group 1	8.38	.25	.27		.05
Group 2	8.48	.25	.27		.05
Group 3	8.53	.25	.27		.05
Group 4	8.63	.25	.27		.05
Group 5	9.34	.25	.27		.05
Group 6	8.90	.25	.27		.05
Group 7	8.74	.25	.27		.05
Group 8	8.43	.25	.27		.05
Lathers:					
Bossier and Caddo Parishes	12.05				
Marble Setters:					
Bossier and Caddo Parishes	9.65	.40			
Calcasieu Parish	12.25	.53	.67		.05
Roofers:					
Calcasieu Parish:					
Roofers	11.13		.20		
Soft Floor Layers:					
Bossier and Caddo Parishes	10.45	.50	.40		.04
Calcasieu Parish	11.18	.60	.33		.07
Terrazzo Workers:					
Bossier and Caddo Parishes	9.65	.40			

MODIFICATION PAGE #14

DECISION NO. LA79-4070 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Calcasieu Parish	$12.25	.53	.67		.05
Tile Setters:					
Bossier and Caddo Parishes	9.65	.40			
Truck Drivers:					
Bossier and Caddo Parishes:					
Group 1	7.72				
Group 2	7.80				
Group 3	8.05				
Group 4	8.20				
Group 5	8.35				
Group 6	8.55				
Power Equipment Operators:					
Calcasieu Parish:					
Group 1	8.56	.65	1.00		.05
Group 2	8.24	.65	1.00		.05
Group 3	8.03	.65	1.00		.05
Group 4	8.84	.65	1.00		.05
Group 5	11.23	.65	1 00		.05
Group 6	9.25	.65	1.00		.05
Group 7	9.93	.65	1.00		.05

MODIFICATION PAGE #15

DECISION NO. MD79-3010 - MOD. #2
(43 FR 27873 - May 11, 1979)
Allegany & Garrett Counties, Maryland

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
CHANGE:					
BRICKLAYERS	$11.19	.65	.40		
CARPENTERS	11.73	.50	.60		.02
CEMENT MASONS	12.12	.50			
IRONWORKERS:					
Structural, Ornamental and Reinforcing	11.72	.60	1.10		
LABORERS:					
Group I	8 90	.80	1 10		
Group II	8.93	.80	1 10		
Group III	9 04	.80	1.10		
Group IV	9.10	.80	1.10		
Group V	9.15	.80	1.10		
Group VI	9.24	.80	1.10		
Group VII	9 73	.80	1.10		
Group VIII	9.35	.80	1.10		
Group IX	9.35	.80	1.10		
MARBLE MASONS	11.19	.65	.40		
PILEDRIVERMEN	12.03	.50	60		.02
PLASTERERS	12.12	.50			
PLUMBERS AND STEAMFITTERS	10 55	50	.70	1.00	.05
STONEMASONS	11.19	.65	.40		
TERRAZZO WORKERS	11.19	.65	.40		
TILE SETTERS	11.19	.65	.40		
POWER EQUIPMENT OPERATORS:					
Group I	11 14	.95	1.00		.13
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads:					
130' to 169' plus $ .40					
170' to 209' plus 60					
210' to 249' plus 80					
250' to 299' plus 1.00					
300' and over plus 1 25					
Group II	10.71	95	1 00		.13
Group III	10.37	.95	1.00		.13
Group IV	10 37	.95	1.00		.13
Group V	10.01	.95	1.00		.13
Group VI	9.66	.95	1.00		.13
Group VII	11.54	.95	1.00		.13

MODIFICATION PAGE #16

DECISION NO. MD79-3010 - CONT'D

CHANGE:
Front end loaders (over 2 yds.) under Group I of Power Equipment Operators Classification Definitions to read Front End Loaders (1 3/4 yds. and over)

Front end loaders (up to and including 2 yds.) under Group 3 of Power Equipment Operators Classification Definitions to read Front End Loaders (under 1 3/4 yards)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION NO. MA78-2081 - MOD. #4 (43 FR 43164 - September 22, 1978) Bristol County, Massachusetts					
Change:					
PAINTERS:					
Achushnet, Dartmouth, Fairhaven, New Bedford, N. Dartmouth & S. Dartmouth:					
Brush and Roller	9.75	.80	.75		
Spray	11.10	.80	.75		
Sandblasting, Chipping Hammer, Power Brush	11.25	.80	.75		
Paperhangers & Vinyl Installers	10 25	.80	.75		
Tapers	9.85	.80	.75		
Steel	13.00	.80	.75		
Steel Spray	14.35	.80	.75		
Sandblasting, Chipping Hammer, Power Tools on Steel	14.50	.80	.75		

MODIFICATION PAGE #17

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision #MS79-1119 - Mod. #3 (44 FR 48567 - August 17, 1979) Hancock, Harrison, Jackson and Pearl River Counties, Mississippi.					
CHANGE:					
Asbestos workers Jackson and Harrison	12.30	.80	1.25	c	.02
Bricklayers:					
Bricklayers	10.25		.50		.01
Blockmasons	10.25		.50		.01
Caulkers and Pointers	10.25		.50		.01
Marble masons	10.25		.50		.01
Stonemasons	10.25		.50		.01
Plasterers	10.15		.50		.01
Terrazzo workers	10.15		.50		.01
Tile setters	10.15		.50		.01
Cement masons	10.25		.50		.01
Carpenters:					
Carpenters	9.30	.45	.30		.05
Soft floor layers	9.30	.45	.30		.05
Millwrights	9.80	.45	.30		.05
Laborers:					
Laborers	6.15	.20	.20		.05
Asphalt rakers, masons tenders mortar mixers, pipelayers, pipe wrappers, post hole diggers, plasterers tenders	6.30	.20	.20		.05
Plumbers and steamfitters	11.10	.56	.70		.05

MODIFICATION PAGE #18

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
DECISION NO. NH79-2041 - MOD. #2 (44 FR 27882 - May 11, 1979) Rockingham & Strafford Counties, New Hampshire					
Change:					
Rockingham County					
Remainder of County					
Carpenters & Soft Floor Layers	$ 9 34	65	.70		.03
Strafford County					
Carpenters & Soft Floor Layers	9.34	65	.70		03
DECISION NO. NH79-2040 - MOD. #1 (44 FR 27878 - May 11, 1979) Hillsboro & Merrimack Counties, New Hampshire					
Change:					
Carpenters & Soft Floor Layers	9.34	.65	70		.03

MODIFICATION PAGE #19

DECISION NO. PA79-3012 MOD # 2 (44 FR 29253 May 18, 1979)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York Cos., Pennsylvania					
ADD:					
Water & Sewage Treatment plant only:					
Carpenters:					
Adams, Bradford, Columbia Cumberland, Dauphin, Juniata, Lancaster, Lebanon, Lycoming, Montour, Northumberland, Perry, Schuylkill, Snyder, Sullivan, Tioga, & Union Counties	$10.92	.55	.65		.05
York County:					
New Cumberland Army Depot & Harrisburg York State Airport in York County	10 92	.55	.65		05
Remainder of York County	10 44	75	.70		.03
Luzerne County:					
Townships in Black Creek, Butler, Dennison, Foster, Hazel, Hollenback, Nescopeck, Sugar Loaf, & the lower part of Salem Townships	10 92	55	.65		.05
Remainder of Luzerne Co.	11.39	.55	.65		.05

MODIFICATION PAGE #20

PA79-3012 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Carbon County:					
Banks, Lausanne, Lehigh, Packer & Kidder Townships north of Route 940	$10.92	.55	.65		.05
Remainder of Carbon County	11.30	.64	.72		.05
Berks County	10.48	.77	.65		
Lackawanna, Pike, Susquehanna, Wayne, Wyoming Counties including Tobyhanna Army Depot in Monroe County	11.14	.67	.50		.05
Remainder of Monroe County	9.73	.44	.72		.02
Lehigh & Northampton Cos.	11.30	.64	.72		.05
Millwrights:					
Adams, Bradford, Cumberland, Columbia, Dauphin, Juniata, Lebanon, Luzerne, Lycoming, Montour, Northumberland, Perry, Schuylkill, Snyder, Sullivan, Tioga, Union & Lancaster Counties & Townships in Carbon County: Banks, Lausanne, Lehigh & northern part of Packer Wyoming County, York County, New Cumberland Army Depot & Harrisburg-York State Airport	12.57	.55	.65		.05
Berks County	11.00	.77	.65		
Lehigh & Northampton Cos.	11.70	.64	.72		.05
Monroe County	10.13	.44	.72		.01
Lackawanna, Susquehanna, Pike, Wayne Counties	11.72	.67	.50		.05
Remainder of Carbon Co.	11.70	.64	.72		.05
Remainder of York County	10.94	.75	.70		.03
Piledrivermen	11.52	2.48	1.40	a	.13

FOOTNOTES:
a - Paid Holidays; Washington Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans' Day; Thanksgiving Day; Christmas Day.

MODIFICATION PAGE #21

PA79-3012 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Cement Masons:					
Heavy and Highway Construction					

Starting at the Franklin County line of Route 30 at the Tuscarora Mountains, follow the Franklin County line to Juniata County line; follow Juniata County line to Susquehanna River then across Susquehanna River to the Dauphin County line; continue on the Dauphin County line to the Lebanon County line to where Route 501 intersects the Lebanon County, then follow Route 501 to Lancaster County line; thence west to Susquehanna River to Route 920 and continue to Goldsboro, Lewisberry, and Rossville to Dillsburg; thence on Route 15 to Heidlersburg; thence on Route 234 to junction with Route 334, up Routes 334 and 34 to junction of road immediately south of Hunters Run; then to Pine Grove Furnace continue on Route 233 to Mount Alto; thence on Route 997 to road immediately south of Fayetteville; thence through New Franklin to Marion; thence to St. Thomas, then on Route 30 through Fort Loudon to Franklin County line at Tuscarora Mountains and west to include all of Fulton County.

Cumberland, Dauphin, Juniata, Perry, Adams, Lebanon, New Cumberland Army Depot in York County	$10.79	.70	.70		
Berks County	10.29		1.65		
Bradford, Lycoming, Sullivan & Union Counties	9.45				
Columbia County	10.00	.55	.70		.01
Scranton in Lackawanna County, Susquehanna, Pike Tioga, Wayne, Wyoming Cos Tobyhanna Army Depot in Monroe County,					
Remainder of Luzerne Co.	12.05				
Carbondale in Lackawanna County	10.45	.85	.70		
Lancaster & Remainder of York County	9.94	.35	.25		.01
Lehigh County	11.27	1.00	.41		
Luzerne County: Hazelton, Berwick, & Freeland Townships	13.25				
Wilkes Barre	11.05				
Monroe County, Remainder of County	11.51	.85	.40		

MODIFICATION PAGE #22

PA79-3012 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Cement Masons, (Contd.) Heavy and Highway Construction					
Snyder, Montour, & Northumberland Counties	10.95				.01
Northampton County	11.39	.60	.66		.01
Schuylkill County	10 20				

MODIFICATION PAGE #23

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX79-4005-Mod. #7 (44 FR 1675-January 5, 1979) Bee, Kleberg and Nueces Counties, Texas					
Change:					
Bricklayers: Kleberg and Nueces Cos.	$ 9.94	.37	.30		.07
Marble, Tile and Terrazzo Workers	8.81	.37	.30		.02
Plasterers	11.00				.01
DECISION #TX79-4032-Mod. #5 (44 FR 16325-March 16, 1979) Harrison County, Texas					
Change:					
Bricklayers and Stonemasons	$11.25		.50		
DECISION #TX79-4034-Mod. #4 (44 FR 41061 - July 13, 1979) Bowie County, Texas					
Change:					
Ironworkers	$11.75	.45	.90		.06
DECISION #TX79-4038-Mod. #8 (44 FR 16328 - March 16, 1979) Travis County, Texas					
Change:					
Plumbers & Pipefitters	$11.80	.45	.40		.05

MODIFICATION PAGE #24

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
DECISION #TX79-4048 - Mod. #7 (44 FR 16330 - March 16, 1979) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher and Wheeler Counties, Texas					
Change:					
Bricklayers and Stonemasons	$11.45		.40		
Carpenters:					
Zone 1:					
Carpenters	11.05		.40		.01
Millwrights	11.40		.40		.01
Ironworkers:					
Zone 1	10.65	.55	1.40		.10
Laborers:					
Group 1	6.17	.63	.32		
Group 2	6.32	.63	.32		
Marble Masons (exterior)	11.45		.40		
DECISION #TX79-4050-Mod. #8 (44 FR 16334 - March 16, 1979) Bell, Bosque, Coryell, Falls, Hill and McLennan Counties, Texas					
Change:					
Building Construction:					
Carpenters:					
Zone 2:					
Carpenters	$10.58				
Millwrights	11.35				

MODIFICATION PAGE #25

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision NO. VA78-3073-Mod#2 (43 FR 47445-October 13,1978) Radford Army Ammunition Plant, Virginia					
CHANGE:					
Asbestos Workers	$10.03	.75	.70		.01
Boilermakers	11.70	1.175	1.10		.04
Carpenters	8.80	.35	.30		.02
Electricians	10.16	.50	3%		½%
Ironworkers:					
Structural and Reinforcing	10.30	.80	.85		.03
Laborers:					
Common Laborers	5.80	.30	.30		.05
Mason Tenders	5.90	.30	.30		.05
Air Tool Operators	6.05	.30	.30		.05
Millwrights	11.45	.35	.30		.02
Painters:					
Brush	8.05	.35	.30		
Spray	8.45	.35	.30		
Plumbers and Pipefitters	10.53	.50	.65	.35	.05
Power Equipment Operators:					
Bulldozer Operators	9.78	.45	.55	a	.03
Rollers	8.03	.45	.55	a	.03
Sheet Metal Workers	10.15	.30	.72		.06
Sprinkler Fitters	11.01	.75	1.05		.08

a- Paid holidays: New Year's Day;Memorial Day;Labor Day;July the Fourth;Thanksgiving Day;& Christmas Day.These are paid holidays only if employee works the regularly scheduled work day immediately before and after the holiday.

Decision NO. VA78-3075-Mod#2 (43 FR 51592-November 3,1978) The cities of Chesapeake, Portsmouth, & Virginia Beach, Virginia					
CHANGE:					
Asbestos Workers	10.15	.70	.70		
Boilermakers	11.70	1.175	1.10		.04
Carpenters & Soft Floor Layers	9.40	.55	.55		.06

MODIFICATION PAGE #26

VA78-3076 Continued	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Cement Masons:					
Cement Masons	$ 8.60				
Machine & Scafford Men	8 70				
Electricians	10.55	.60	8%	a	1%
Ironworkers:					
Reinforcing, Ornamental, Structrual, Riggers, Fence Erectors, Machinery Movers	10.30	.65	1 10		.08
Laborers:					
Unskilled	6.10	.25	.25		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool & Vibrator Operators	6.20	.25	.25		.05
Mortar Mixers, Hod Carriers Pipelayers, Caulkers, Marble Tile & Terrazzo Workers					
Helpers	6.35	25	.25		.05
Burners (wrecking)	6.45	.25	.25		.05
Floor Base & Terrazzo Grinders	6.50	.25	.25		.05
Wagon Drill & Air Trac	6.60	25	.25		.05
Powdermen	6.85	25	.25		.05
Lathers	10.75		.25		
Line Construction:					
Linemen & Cable Splicers	10.55	.60	8%		1%
Marble Setters	8.83	.60	20		
Millwrights	10.70	.55	.55		.01
Painters:					
Brush and Roller	8.75		.40		
Structural Steel Fm Ground to 74'	9.25		.40		
Spray, Paperhangers & Glove Work	9.10		.40		
Any Work Over 74' From The Ground	10.05		.40		
Bituminous Coating & Hot Creosite	10.40		.40		

MODIFICATION PAGE #27

VA78-3076 Continued	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
Swing Stage Under 40', Rollers With 6' Handles & Over, Epoxy Brushed or Rolled	$ 9 00		.40		
Swing Stage Over 40'	9 25		.40		
Epoxy, Sprayed	9.35		40		
Sandblasting	9.50		.40		
Piledrivermen & Dockbuilders	8 70	.55	.55		
Plasterers	10.86				
Power Equipment Operators:					
Group 1	10.20	.575	.50		.08
Group 2	8.10	.575	.50		.08
Group 3	6.55	.575	.50		.08
Group 4	6 35	.575	.50		.08
Group 5	6.16	.575	.50		.08
Sheet Metal Workers	10.05	45	.55		.005
Sprinkler Fitters	11.01	.75	1.05		.08
Terrazzo & Tile Workers	8 83	.60	.20		
a 2 hours off with pay on State & National Election Days					

Decision NO. VA78-3075-Mod#4
(43 FR 51590-November 3,1978
York County and the Cities of Hampton and Newport News (including Langley AFB, Fort Eustis and Fort Monroe) Virginia

CHANGE:

Asbestos Workers	10.15	.70	.70		
Boilermakers	11.70	1.175	1.10		.04
Bricklayers and Stonemasons	10 00				
Carpenters & Soft Floor Layers	9.40	.55	.55		.06
Cement Masons:					
Cement Masons	8.60				
Machine & Scafford Men	8.70				
Electricians:					
Zone 1-within a 16 air mile radius of 7812 Warwick Blvd Newport News:					
Wiremen	10.55	.60	8%		1%
Cable Splicer	10.80	.60	8%		1%

MODIFICATION PAGE #28

VA78-3075 Continued	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Zone 2-beyond a 16 air mile radius of 7812 Warwick Blvd Newport News:					
Wiremen	$11.55	.60	8%		1%
Cable Splicer	11.80	.60	8%		1%
Ironworkers:					
Structural, Ornamental, Riggers, Reinforcing, Fence Erectors, & Machinery Movers	10.30	.65	1.10		.08
Laboers:					
Unskilled	6.10	.25	.25		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool & Vibrator Operators	6.20	.25	.25		.05
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble Tile & Terrazzo Workers Helpers	6.35	.25	.25		.05
Burners (wrecking)	6.45	.25	.25		.05
Floor, Base, & Terrazzo Grinder	6.50	.25	.25		.05
Wagon Drill & Air Trac	6.60	.25	.25		.05
Powderman	6.85	.25	.25		.05
Lathers	10.75		.25		
Millwrights	10.70	.55	.55		.01
Painters:					
(York County from a point on North Shore of Queens Creek at the intersection of York River due west to a point on the eastern shore of James River including all cities therein the cities of Hampton and Newport News:)					
Brush and Roller	8.25		.35		

MODIFICATION PAGE #29

VA78-3075 Continued	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Paperhanger, Taper, Spray, Roller with a 6' Handle or Over, Structural Steel to 74' from the Ground Up, Swing Stage, Under 40', Sandblasting	$ 8.60		.35		
Swing Stage Over 40', Spray Epoxy	8.85		.35		
Epoxy Brushed or Rolled	8.50		.35		
All Work Over 74' from the Ground	8.75		.35		
Bituminous Coatings, Hot Creosite	9.65		.35		
Painters: Remainder of York County:					
Brush and Roller	8.85		.35		
Paperhanging, Taper, Spray, Roller with a Handle 6' or Over, Structural Steel 74' from the Ground Up, Swing Stage Under 40', Sandblasting	9.20		.35		
Swing Stage Over 40', Epoxy Sprayed	9.45		.35		
Epoxy Brushed or Rolled	9.10		.35		
All Work Over 74' from the Ground	9.35		.35		
Bituminous Coatings, Hot Creosite	10.25		.35		
Piledrivermen & Dockbuilders	8.70	.55	.55		
Plasterers	10.86				
Plumbers & Steamfitters	10.90	.45	.45		.02
Power Equipment Operators:					
Group 1	10.20	.575	.50		.08
Group 2	8.10	.575	.50		.08
Group 3	6.55	.575	.50		.08
Group 4	6.35	.575	.50		.08
Group 5	6.16	.575	.50		.08
Sheet Metal Workers:					
Newport News & Hampton	10.30	.45	.55		.005
York County	10.55	.45	.55		.005
Sprinkler Fitters	11.01	.75	1.05		.08

MODIFICATION PAGE #30

Decision NO. VA78-3074-Mod#5 (43 FR 51588-November 3,1978 Henrico & the independent City of Richmond, Virginia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
Asbestos Workers	$10.08	80	.95		.01
Boilermakers	11.70	1 175	1.10		.04
Bricklayers & Stonemasons	11.00	.75	.30		.02
Carpenters & Soft Floor Layers	9.40	.55	.55		.06
Cement Masons:					
Cement Masons	9.00				
Cement Masons Machine Man	9.10				
Laborers:					
Unskilled	6.10	.25	.25		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool & Vibrator Operators	6.20	.25	.25		.05
Mortar Mixers, Hod Carriers Pipelayers, Caulkers,Marble & Tile& Terrazzo Workers Helpers	6.35	.25	.25		.05
Burners (wrecking)	6.45	.25	.25		.05
Floor, Base & Terrazzo Grinders	6 50	.25	.25		.05
Wagon Drill, Air Trac	6.60	.25	.25		.05
Powdermen	6.85	.25	25		05
Lathers:					
Plasterer & Drywall Finsh	10.24		.20		.01
Sheet Rock Applicator	8.54		.20		.01
Linemen and Cable Splicers:					
Zone 1-within a 12 mile air radius of Staples Mill Road & Broad Street in the city of Richmond	11 65	6%	3%		½%
Zone 2-remainder of city of Richmond & Henrico County	12.40	6%	3%		½%
Marble, Tile, & Terrazzo Workers	8.90				

MODIFICATION PAGE #31

VA78-3074 Continued	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Millwrights	$10.70	.55	.55		.01
Painters:					
Brush, Paperhangers, Tapers & Finishers	8.80				
Structural Steel, Swing Stage & Boson Chair	9.05				
Scafford or other Hazard Work over 50!	9.05				
Spray	9.30				
Sandblasting, Elevated Tanks Smoke Stacks & All Towers	9.45				
Piledrivermen & Dockbuilders	8.70	.55	.55		
Plasterers	10.45				
Plumbers & Steamfitters	11.55	.45	.60		.05
Power Equipment Operators:					
Group 1	10.20	.575	50		.08
Group 2	8.10	575	.50		.08
Group 3	6.55	.575	.50		.08
Group 4	6.35	.575	.50		.08
Group 5	6.16	575	.50		.08
Sprinkler Fitters	11.01	.75	1.05		.08

STATE: Alabama COUNTIES: *See below
DECISION NO.: AL79-1134 DATE: Date of Publication
Supersedes Decision No: AL79-1080 dated May 4, 1979 in 44-FR-26411
DESCRIPTION OF WORK: Heavy Construction Projects

*Counties: Calhoun, Etowah, Green, Jefferson, Pickens, St. Clair, Shelby, Sumter, Talladega, Tuscaloosa and Walker

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Bricklayers	9.50				
Carpenters:					
Green, Pickens, Sumter and Tuscaloosa Counties	8.88				.06
Jefferson, Shelby, Walker and that portion of St. Clair and Talladega County West of Highway 231 from the Blount County line South to Interstate 20. Also that portion of St. Clair and Talladega Counties South of Interstate 20 and West of U.S. Alternate 231 South, not including the City of Talladega and that portion of Talladega County South, of the City of Talladega and West and South of the Talladega National Forest	9.32	.50	.35		.07
Calhoun, Etowah and Remainder of St. Clair and Talladega Counties	7.65	.50	.35		.06
Electricians	12.05	.55	3%+.40		½ of 1%
Ironworkers	11.60	.60	.82		.06
Laborers:					
Air tool operator	6.20	.30	.35		.05
Asphalt lute man	6.20	.30	.35		.05
Asphalt raker	6.20	.30	.35		.05
Batch truck dumper	6.05	.30	.35		.05
Caisson hole men (10' dia.)	6.80	.30	.35		.05
Chain saw operator	6.20	.30	.35		.05
Concrete saw operator	6.20	.30	.35		.05
Dry cement handlers (bulk or bag)	6.20	.30	.35		.05
Hand blade operator	6.05	.30	.35		.05
General laborer	6.05	.30	.35		.05

AL79-1134-(Cont'd)

LABORERS (cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr.
Mortar mixers	6.15	.30	.35		.05
Muckers	6.15	.30	.35		.05
Pipelayers	6.15	.30	.35		.05
Powderman & blasters	6.88	.30	.35		.05
Side rail setters	6.20	.30	.35		.05
Vibrator operator	6.20	.30	.35		.05
Wagon drill operator	6.45	.30	.35		.05
Oxagon operator	7.55	.30	.35		.05
Tunnel work (free air)					
Chuck tender	6.60	.30	.35		.05
Head miner	7.05	.30	.35		.05
Pneumatic concrete gun operator & nozzleman	6.75	.30	.35		.05
Tunnel laborer	6.45	.30	.35		.05
Tunnel miner	6.85	.30	.35		.05
Plumbers and Pipefitters	9.45	.30	.30		.05
Truck drivers	5.75	.20	.45		.05

AL79-1134 - (Cont'd)

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS A	10.29	.50	.40		.10
CLASS B	9.66	.50	.40		.10
CLASS C	9.18	.50	.40		.10
CLASS D	8.47	.50	.40		.10

CLASS A: Asphalt plant, asphalt spreader, backhoe, boat operator, (inboard), boom tractor, bulldozer, cableways, cherry picker, compressors-2, or more within 200 ft. radius, concrete plants-stationary, mixer operator, concrete pump, conveyors-2 or more up to 4, core driller-crane-derricks-draglines-deck hoist on construction barges, crane-hydro, dinky locomotive, distributors-bituminous surface, dredge operator, farm tractor with attachments (30 HP or more-which are an intergral part of tractor), fork lift, front end loader, gradall, headhouse operator, heavy duty, mechanic, hoist-2 drums or more, ice plant in connection with concrete, mixers-5 bags or over, motor graders, pile driver, push tractor, quarry master and rock crusher, rollers-asphalt, scraper, scrapers in tandem (operator to receive 25¢ per hour for each additional scraper), shovels, trenching machines and all similar equipment.

CLASS B: Crawler, tractor, hoist-1 drum, pumps-2 or more 4 inch & over, under 5 within 200 ft, radius, rollers (other than asphalt), winch truck, well points and other equipment used for dewatering.

CLASS C: Air compressor, blade graders-pull type, farm tractor with attachments finishing machine-screed mounted self-propelled, mixers-under 5 bags.

CLASS D: Outboard boats, air compressor-125 and under, conveyor-one, (1) tended by oiler, pumps-under 4 inch-3 or under, welding machines-3 or under, oiler in-board boats, deck hand.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KENTUCKY COUNTY: FRANKLIN
DECISION NUMBER: KY79-1143 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY79-1021, dated February 2, 1979, in 44 FR 6870.
DESCRIPTION OF WORK: BUILDING PROJECTS (does not include single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS	$12.85	.60	1.00		
BOILERMAKERS	10.70	1.05	1.10		.02
BRICKLAYERS & STONE MASONS	11.90	.45	.50		
CARPENTERS & SOFT FLOOR LAYERS	11.40	.55	.30		
CEMENT MASONS	12.20				
ELECTRICIANS	13.50	.45	3% + .50		.0025
ELEVATOR CONSTRUCTORS:					
Mechanics	12.57	1.045	.69	a + b	.03
Helpers	8.80	1.045	.69	a + b	.03
Probationary helpers	6.285				
GLAZIERS	13.25				
IRONWORKERS	12.00	1.40	1.45		.06
LATHERS	11.65		.10		
LINE CONSTRUCTION:					
Linemen & equipment operators	13.85	.60	3%		½ of 1%
Cable splicers	14.10	.60	3%		½ of 1%
Groundmen-truck drivers	11.08	.60	3%		½ of 1%
Groundmen	10.39	.60	3%		½ of 1%
MARBLE, TILE, TERRAZZO WORKERS	10.85	.45	.50		.01
MILLWRIGHTS & PILEDRIVERMEN	11.90	.55	.30		
PAINTERS:					
Brush, drywall finishers, paperhangers	10.15	.45			
Steeple jack work, window jack work, work in enclosed buildings over 35' in height from permanent work floor area, steam cleaning	10.65	.45			
Sandblasting & arpaying	10.90	.45			
PLASTERERS	9.65				
PLUMBERS & PIPEFITTERS:					
Western 3/4 of County, including the City of Frankfort:					
Plumbers	14.58	.80	1.24		.15
Pipefitters	14.52	.75	1.40		.10
Remainder of County	13.25	.65	.85		.05
ROOFERS:					
Roofers	8.80	.65	.45		
Slate, tile, & precast concrete slab	9.20	.65	.45		
SHEET METAL WORKERS	12.88	1.563	1.47		.16
SPRINKLER FITTERS	13.33	.75	1.05		.08
WELDERS - Rate for craft.					

FOOTNOTES:

a. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day.

b. Vacation Pay Credit - employer contributes 8% of the basic hourly rate for employees with 5 years or more of service, or 6% for employees with 6 months to 5 years of service.

DECISION NO. KY79-1143

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
GROUP I	$ 8.40	.35	.47		
GROUP II	8.80	.35	.47		
GROUP III	9.00	.35	.47		
GROUP IV	9.10	.35	.47		
GROUP V	9.60	.35	.47		
GROUP VI	9.90	.35	.47		

LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP I - General laborers, water boys, concrete pouring, concrete forms stripping and wrecking, hand digging and backfilling of ditches, clearing of right-of-ways and building sites, wood sheeting and shoring, signalman for concrete bucket, and general cleaning.

GROUP II - All air tool operators, air track drills, asphalt rakers, barco tampers, batcher plant and scale man, chain saw, concrete saw, electric hand grinder, all electric bush and chipping hammers, flagman, forklift operators, form setter (street or highway), gunnite laborers, hand spiker, Introflax burning rod, joint makers, mason tenders, pipe layers, plasterer tenders, powderman helpers, power driven Georgia Buggies, power posthole digger, railroad laborers, sandblaster laborers, scow man and deck hand, signal man, sweeper and cleaner machines, vibrator operators, walk behind trenching machines, mortar mixer machines, water pumpman.

GROUP III - Gunnite nozzleman and gunnite nozzle machine operator, sand blaster nozzleman, concrete or grout pumpman, plaster pumpman.

GROUP IV - Powderman and Blaster.

GROUP V - Caisson holes (6 ft. & over) pressure and free air including tools.

GROUP VI - Tunnel man and tunnel sand miner, cofferdam (pressure and free air) sand hog or mucker (pressure or free air.

DECISION NO. KY79-1143

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CLASS A	$11.60	.50	.80		.05
CLASS B	8.86	.50	.80		.05
CLASS C	8.09	.50	.80		.05

CLASSIFICATIONS DEFINITIONS

Class A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge operator, dredge engineer, elevating grader and all types of loaders, hoe type machine, hoist (1-drum when used for stack or chimney construction or repair), hoisting engine (2 or more drums), locomotive, motor scraper, carry-all scoop, bulldozer, heavy duty welder, mechanic, orangepeel bucket, pile driver, power blade, motor grader, roller (bituminous), scarifer, shovel, tractor shovel, truck crane, winch truck, push dozer, highlift, forklift (regardless of lift height and except when used for masonry construction), all types of boom cats, core drill, hopto, tow or push boat, A-frame winch truck, concrete paver, gradeall, hoist, hyster, pumpcrete, Ross carrier, boom, tail boom, rotary drill, hydro hammer, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, sub-grader;

Class B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, joint sealing machine, concrete mixer (under 21 cu. ft.), form grader, roller (rock), tractor (50 hp and over), bull float, finish machine, outboard motor boat, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, mechanic helper, whirley oiler, self-propelled compactor, tractair and road widening trencher and farm tractor with attachments except backhoe, highlift and end loader, elevator (regardless of ownership when used for hoisting any building material), hoisting engine (1-drum or buck hoist), forklift (when used for masonry construction), well points, grout pump, throttle-valve man, tugger, electric vibrator compactor;

Class C - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, roller (earth), tamping machine, tractors (under 50hp), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand steersman, hydraulic post driver, drill helper.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(ii))."

SUPERSEDEAS DECISION

STATE: Missouri

COUNTIES: Franklin, Jefferson, Lincoln, St Charles, Warren & City & County of St Louis

DECISION NO MO79-4094

DATE: Date of Publication in 44 FR 27876

Supersedes Decision No MO79-4063 dated May 11, 1979

DESCRIPTION OF WORK: Building projects, (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ASBESTOS WORKERS:					
Asbestos workers	13.26	.90	1.04		
Swing stage of bosun's chair	13.51	.90	1 04		
Asbestos workers requiring spray in application	13 51	.90	1 04		
BOILERMAKERS	12 15	1 15	1 00	-	.02
BRICKLAYERS; STONEMASONS	11.90	.72	.70	.90	.03
CARPENTERS; MILLWRIGHTS; PILE-DRIVERMEN:					
Zone 1 - St. Louis City & County	11.66	.75	.90		
CARPENTERS					
Zone 2 - Franklin County:					
Contracts $200,000.00 & under	10 00	.70	.80		
Contracts over $200,000 00	11.66	.75	90		
Zone 3 - Jefferson County:					
Contracts $25,000.00 & under	9.96	.50	.70		
Contracts over $25,000 00	11 66	.75	.90		
Zone 4 - St. Charles County:					
Contracts under $250,000 00	11 00	.70	.80		
Contracts over $250,000 00 or more	11 66	.75	.90		
Zone 5 - Lincoln & Warren Counties:					
Contracts $250,000.00 & under	10.35	.70	.80		
Contracts over $250,000.00	11.66	.75	.90		
CEMENT MASONS:					
Zone 1 - Jefferson & St. Charles Counties and St. Louis City & County	10.15	1.00	.95		
Zone 2 - Franklin, Lincoln & Warren Counties:					
Projects less than $100,000 00	9.50	1 00	.95		
Projects $100,000.00 & over	10.15	1 00	.95		
ELECTRICIANS:					
Zone 1 - City & County of St. Louis and St Charles County	12.25	.70	3%+5½%	15½%	.10
Zone II - Franklin, Jefferson, Lincoln & Warren Counties where electrical contracts exceed $15,000 00	12 25	.70	3%+5½%	15½%	.10
Zone III - Franklin, Jefferson, Lincoln, and Warren Counties where the electrical contract does not exceed $15,000.00	11.46	.70	3%+5½%	15½%	.10

DECISION NO. MO79- 4094

Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ELEVATOR CONSTRUCTORS	11 38	.895	69	3%+a	025
ELEVATOR CONSTRUCTORS HELPERS	70%JR	895	.69	3%+a	.025
ELEVATOR CONSTRUCTORS HELPERS' (PROB)	50%				

FOOTNOTES:

a - Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit, also 7 Paid Holidays.

GLAZIERS	11 95	.88	1 58	13.2%	.01
IRONWORKERS	12 075	.55	1 05		09
LABORERS:					
Zone 1 - City & Co. of St. Louis					
General laborer	10 575	45	1 00		
Wrecking	10 45	45	1 00		
Mason tenders (brick)	10 95	.45	1 00		
Residential rehabilitation work	6.05	.45	1 00		
Zone 2 - Franklin County:					
Contracts $250,000 00 or less:	8 25	.60	.50		
General labor	8.25	60	.50		
Mason tenders, plumber laborers, plaster tender	8 45	.60	.50		
Contracts over $250,000 00:					
General laborer	9 75	.60	.50		
Mason tenders, plumber laborer plaster tender	9 95	.60	.50		
Zone 3 - Jefferson County:					
Laborers	9 90	60	.40		
Powderman, mason tenders, Plaster Tender	10 40	.60	.40		
Zone 4 - St. Charles County:					
General laborer	11.025	.60	.50		
Semi-skilled	11 50	.60	.50		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
LABORERS CONTD:					
Zone 5 - Lincoln & Warren Cos:					
General laborer	10.525	.60	.50		
Semi-skilled	11.00	.60	.50		
LATHERS	11.955	.57	.55		½ of 1%
MARBLE SETTERS	10.86	.85	1.205		
MARBLE SETTERS HELPERS'	10 08				
PAINTERS:					
Zone 1 - Lincoln County:					
Brush	7.85				
Spray	8.35				
Zone 2 - Franklin, Jefferson, St Charles, Warren Counties & City & County of St. Louis					
Brush	11.24	.68	.33		.04
Spray	12.74	.68	.33		.04
PIPEFITTERS (Franklin, Jefferson St. Charles, St. Louis & Warren Counties)	12.95	2.165	1.51		
PIPEFITTERS & PLUMBERS (Lincoln County)	12 95	2.165	1.51		
PLASTERERS	10.295	.48	.80		.03
PLUMBERS (Franklin, Jefferson, St. Charles, St. Louis and Warren Counties)	12.505	.80	.80	.80	.20
POWER EQUIPMENT OPERATORS:					
Zone 1					
Group 1	12.42	.50	1.00		
Group 2	11.87	.50	1.00		
Group 3	11.42	.50	1.00		
Group 4:					
(a)	11.47	.50	1.00		
(b)	12.32	.50	1.00		
(c)	12.77	.50	1.00		
(d)	13.52	.50	1.00		
(e)	12.92	.50	1.00		

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS (ZONE 1)

Group 1 - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted-16 tons & over; crane, locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive gas, steam & other power; pile driver, land or floating; scoop, skimmer; shovel, power (steam)-gas electric or other powers);switch boat; whirley; air tugger w/air compressor; anchor placing barge; asphalt spreader; athey force feed loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker, combination concrete hoist & mixer such as mixermobile; compressors, two, not more than 50 ft. apart; compressor-welder combination; concrete breaker (truck or tractor mounted); conctete pump, such as pumperete machine; concrete spreader; conveyor, large (not self-propelled) hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines, self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers, jack-hammers and barco equipment); , elevating grader;; engine man, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; highlift; hoist, concrete and brick (brick cages on concrete skips operating in or on tower, towermobile, or similar equipment); hoist, stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mixer-mobile, mucking machine, pipe cleaning machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or reading-mix-job site; plant, heating-job-site; plant-mixing-job-site; plant, power generating-job site; pumps, two self-powered, over 2" through 6"; pumps, electric submersible, one through three, over 4" quad-track; roller, asphalt, top or subgrade; scoop tractor drawn; spreader box; subgrader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine, tunnel boring machine; vibrating machine, automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine; mechanic on jobsite; mixer, paving.

Group 2 - Air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor, air (mounted on truck); concrete saw, self-propelled; conveyor, large (not self-propelled); conveyor, large (not self-propelled) moving brick and concrete (distributing) on floor level; curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; fireman; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist, one drum regardless of size (except brick or concrete); lad-a vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity; mixer, if two or more mixers of one bag capacity or less are used by one employer on job, an operator is required; mixer, without side loader, 2 bag capacity or more; mixer with side loader, regardless of size, not paver; oiler on dredge; oiler on truck crane; pug mill operator; pump, sump-self-powered, automatic controller over 2" during use in connection with con-

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS CONTD:
Group 2 Contd. - struction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h p. and under with grader blade and similar equipment

Group 3 - Boat operator-outboard motor (job-site); conveyor (such as con-vay-it); regardless of how used; oiler; sweeper, floor

Group 4 - (a) Air pressure, oiler engineer operating under ten pounds. (b)Air pressure, oiler engineer operating over ten pounds. (c)Air pressure engineer operating under ten pounds (d)Air pressure engineer operating over ten pounds. (e)Crane-pile driving and extracting; crane using rock socker tool, dragline-7 cu yds & over, shovel, power-7 cu. yds. and over, crane, climbing (such as linden), derrick, diesel, gas or electric hoisting material or erecting steel 150' or more above ground, hoist, three or more drums; scoop, tandem; tractor, tandem crawler.

Crane, with boom (including jib) over 100' from pin to pin (add 1¢ per foot to maximum of 1.00) above basic rate for cranes.

Work in tunnel or tunnel shaft, .50¢ above base rate.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
ROOFERS:					
Composition; slate and tile	11.55	.82	.60		.03
Kettlemen	9.35	.82	.60		.03
SHEET METAL WORKERS	11.94	3&+.56	.76	.96	.04
SOFT FLOOR LAYERS	8.74	.58	.35	.50	.14
SPRINKLER FITTERS	13.81	.75	1.05		.12
TERRAZZO WORKERS	12.75				
TILE SETTERS	10.98	.85.	1.205		.04
TILE SETTERS HELPERS	8 58	.325	.40		
TRUCK DRIVERS:					
Truck or trailers of water level capacity of 11.99 cu. yds. or less fork lift trucks, job site ambulances, pick-up trucks, flat bed trucks	6.99	d	e	f&g	
Truck or trailers of water level capacity of 12.0 cu. yds up to 22.0 cu. yds. including euclids, speedace &similar equipment of same capacity	7.19	d	e	f&g	
Truck or trailers of water level of 22.0 cu. yds & over incl. euclids, speedace & all floats flat bed trailers & boom equipment of same capacity	7 29	d	e	f&g	

FOOTNOTES: d-Employer contribution of $12 50 per week; e-Employer contribution of $12.00 per week; f-Paid Holidays: New Year's Day, Independence Day, Labor Day, Vererans Day, Thanksgiving Day, Friday After Thanksgiving Day, Christmas Day; g-Paid vacation of 3 days for 600 hours of service in any one contract year, 4 days paid vacation for 800 hours of service in any one contract year, 5 days paid vacation for 1,000 hours of service in any one contract year.

WELDERS - receive rate prescribed for craft performing operation to which is incidental.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(ii)."

SUPERSEDEAS DECISION

STATE: Virginia
DECISION NO 79-VA-3049
Supersedes Decision No. 78-VA-3038 dated April 28,1978 in 43FR 18481
DESCRIPTION OF WORK:
Highway Construction

COUNTIES: Accomack, Greensville, Isle of Wight, James City, Northampton, Southampton, Surry, Sussex, York The Cities of Emporia, Franklin, Suffolk, and Williamsburg
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asphalt Raker	$4.00				
Carpenters, Structure	5 81				
Carpenter Structure Helper	4.00				
Concrete Finisher	5.21				
Concrete Finisher Helper	4.00				
Form Setter Road	4.25				
Guard Rail/Fence Erector	3.90				
Ironworker,Reinforcing	6.20				
Laborers, Unskilled	3.00				
Landscape Worker	3.35				
Mechanic	5.58				
Mechanic Helper	4.00				
Piledriver Leadsman	4.50				
Piledriver Operator	4.95				
Pipelayer	3.00				
Sign Erector	5.06				
Power Equipment Operators:					
Asphalt Distributor	3.65				
Asphalt Paver	4.38				
Backhoe	5.13				
Bulldozer	5.04				
Bulldozer, Utility	4.50				
Concrete Finish Machine Op.	3.75				
Crane, Derrick, Dragline (1 yd. & under)	5.60				
Crane, Derrick, Dragline (over 1 yd.)	7.00				
Loader (2 yds. & under)	4.72				
Loader (over 2 yds.)	4.92				
Motor Grader (Fine Grade)	5.73				
Motor Grader (Rough Grade)	5.00				
Oiler-Greaser	3.90				
Power Tool	6.00				
Roller (Rough)	3.50				
Roller (Finish)	4.07				
Scraper-Pan	4.62				
Stabilizer Operator	4.23				
Stone Spreader	4.36				
Subgrade Operator	4.00				
Tractor, Utility	3.50				
Truck Drivers:					
Heavy Duty (over 7 c.y.)	3.50				
Multi Rear Axle	3.53				
Single Rear Axle	3.00				

Welders - Receive rate prescribed for craft performing operation to which welding is incidental

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(ii)) "

SUPERSEDEAS DECISION

STATE: Virginia
DECISION NO 79-VA-3050
SUPERSEDES DECISION NO 78-VA-3058
dated August 4,1978 in 43FR 34706
DESCRIPTION OF WORK:
Highway Construction

COUNTIES: Amherst,Appomattox, Buckingham, Campbell, Charlotte, Cumberland, Halifax, Nelson, Pennsylvania, Prince Edward, and The Cities of Danville, Lynchburg, and So. Boston
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Carpenter, Structure	$5.08				
Carpenter Helper, Structure	3 85				
Concrete Finisher	4 00				
Concrete Finisher Helper	3 67				
Electrician	6 63				
Fence Erector/Guard Rail	3.20				
Fireman	3 00				
Form Setter Road	3.70				
Ironworker, Reinforcing	6 00				
Laborer, Unskilled	3 00				
Landscape Worker	3 86				
Mechanic	4.61				
Mechanic Helper	3 42				
Pipelayer	3 52				
Sign Erector	3.71				
Asphalt Distributor Op	3 96				
Backhoe Operator	4.44				
Bulldozer Operator	4 45				
Bulldozer Operator-Utility	4.36				
Crane, Derrick, Dragline Op.					
1 yd. and under	4.75				
Over 1 yard	5.88				
Drill Operator	4.03				
Loader Operator:					
2 yds. & under	4.52				
Over 2 yards	4.64				
Motor Grader Operator-Fine Grade	5.12				
Motor Grader Operator-Rough Grade	4.00				
Oiler/Greaser	3.44				
Roller Operator-Rough	3 51				
Roller Operator-Finish	4.00				
Scraper-Pan Operator	4.25				
Stone Spreader Operator	4.75				
Subgrade Machine Operator	5 25				
Tractor Operator-Utility	3.50				
Trenching Machine Operator	3 50				
Truck Driver, Heavy Duty:					
7 c.y. and under	3.50				
over 7 c.y.	3.50				
Truck Driver-Single Rear Axle	3.00				
Truck Driver-Multi Rear Axle	3.68				

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(ii)) "

SUPERSEDEAS DECISION

STATE: Virginia
DECISION NO. VA-79-3051
SUPERSEDES DECISION NO. 78-VA-3057 dated August 4, 1978 in 43FR 34706
DESCRIPTION OF WORK: Highway Construction

COUNTIES: Caroline, Essex Gloucester, King George, King & Queen, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, Spotsylvania, Stafford, Westmoreland and the Independent City of Fredericksburg.
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Asphalt Raker	$3.50				
Carpenter, Structure	6.01				
Carpenter Helper, Structure	4.70				
Cement Finisher	6.15				
Concrete Finisher Helper	5.00				
Electrician	9.15				
Form Setter-Road	7.28				
Guardrail/Fence Erector	3.52				
Ironworker, Reinforcing	8.00				
Ironworker, Reinforcing Helper	3.75				
Ironworker, Structural	5.00				
Laborer, Unskilled	3.77				
Mason, Structure	4.25				
Mechanic	5.50				
Painter, Bridge	7.65				
Piledriver-Leadsman	4.75				
Pipelayer	4.50				
Asphalt Distributor Op.	4.18				
Asphalt Paver Operator	4.43				
Backhoe Operator	5.53				
Bulldozer Operator	5.00				
Crane, Derrick, Dragline (1 yd. and under)	6.92				
Crane, Derrick, Dragline (over 1 yard)	6.92				
Drill Operator	5.50				
Loader Operator (2 yds. & under)	5.04				
Loader Op. (Over 2 yds.)	5.22				
Motor Grader Operator-Fine Grade	5.90				
Motor Grader Operator-Rough Grade	5.24				
Oiler-Greaser	4.34				
Power Tool Operator	3.88				
Roller Operator-Rough	4.09				
Roller Operator-Finish	5.00				
Stone Spreader Operator	3.50				
Subgrade Machine Operator	6.50				
Tractor Operator-Utility	3.69				
Truck Driver, Heavy Duty: 7 c.y. and under	3.50				
Scraper-Pan Operator	4.50				

(CONTINUED)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Truck Driver, Heavy Duty: over 7 c.y.	4.35				
Truck Driver:					
Single rear axle	3.50				
Multi rear axle	3.90				

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(ii))."

[FR Doc. 79-34430 Filed 11-8-79; 8:45 am]

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Federal Register

Friday
November 9, 1979

Part IV

Department of Agriculture

Food and Nutrition Service

Food Stamp Act of 1977

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 274, 276, and 277

[Amd. No. 156]

Food Stamp Act of 1977

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal sets forth changes in the content and manner of submission for State Plans of Operations (272.2) and State operating guidelines (272.3); changes in the procedures for assessing State agency liabilities for program losses; changes in the procedures for invoking Federal sanctions to obtain compliance with program requirements; and administrative appeals mechanism for use when claims are assessed against a State agency (276); changes in the level of Federal reimbursement for specific State agency administrative costs involving food stamp prosecutions and investigations; and changes in the level of Federal reimbursement for overall administrative costs when the State agency reduces program losses due to certification errors to below a specified level (277). In addition, a reconciliation report which documents accountability for the issuance of program benefits is introduced in Part 274. These changes are necessitated in part by the Food Stamp Act of 1977 (Title XIII, Pub. L. 95-113, 91 Stat. 958, et seq., Sept. 29, 1977)[1] and by other administrative considerations. In particular, the Department anticipates the changes will improve coordination between program planning and priorities and the budgetary process, and provide for a more effective system of program and financial incentives and disincentives to bring about better program administration.

DATES: Comments should be received by January 8, 1980, in order to be assured of consideration.

ADDRESS: Comments should be submitted to: Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments, suggestions or objections will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street, SW., Washington, D.C., Room 658.

FOR FURTHER INFORMATION CONTACT: For Parts 272, 274, 276—Sue McAndrew, Chief, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250. Phone: (202) 447-6535.

For Part 277—David Hamer, Director, Financial Monitoring and Reporting Division, Food and Nutrition Service, Washington, D.C. 20250. Phone: (202) 447-8275.

SUPPLEMENTARY INFORMATION:

State Plan of Operation

The Department is proposing to redesign the State Plan of Operation requirements to: (1) provide State agencies a formal method for consolidating the major Food Stamp Program plans; (2) simplify the preparation and submittal of State Plans of Operation; and (3) ensure that the public has the opportunity to comment on the aspects of State rulemaking which directly impact on the public.

The proposed regulations would require State agencies to consider major corrective action objectives, existing program deficiencies, State established goals and any FNS guidance when planning program operations for the next fiscal year. In its planning activities, State agencies would use the State Corrective Action Plan as a primary planning source in reviewing past accomplishments, identifying existing problem areas, and evaluating proposed corrective action objectives. Close coordination between program planning and corrective action planning would ensure that the budget is supportive in terms of resource allocations.

The Department proposes that FNS may provide State agencies guidance in planning and budgeting activities. Such guidance could include emphasis on the implementation of new regulations or a corrective action objective determined by FNS to be essential for an individual State to operate efficiently and effectively and provide required service to participants or potential participants.

The Department proposes that the State Plan of Operation consist of a Program and Budget Summary Statement and narrative attachments and supporting planning documents including: State Corrective Action Plan; Outreach Plan; Disaster Plan; and Nutrition Education Plan if the State elects to request Federal matching funds for conducting a Nutrition Education Program. An additional part of the State Plan of Operation would be a Federal/State Agreement containing an agreement by States to administer the Program in accordance with the Food Stamp Act of 1977 and regulations issued pursuant to the Act; an agreement by States to implement the FNS approved State Plan of Operation; and a statement of FNS responsibility for administrative cost sharing. Each of the components of the State Plan of Operation will be explained in detail later in this section.

The Food Stamp Act provides that the State agency of each State desiring to participate in the Food Stamp Program shall submit for approval a plan of operation specifying the manner in which such program will be conducted within the State in every political subdivision, Section 11(d), 91 Stat. 969. The Act goes on to list other specific provisions to be included in the State Plan of Operation such as: outreach; certification procedures; timeliness standards; reporting requirements; disaster provisions; etc., Section 11(e), 91 Stat. 970. The legislative history does not give a clear explanation of the intent of the Act in terms of the degree of specificity that should be contained in the State Plan of Operation. However, the discussion does imply that the Department is responsible for carefully monitoring the implementation of "State Plans of Operations" to ensure the successful accomplishment of the provisions contained in the plan. House Report No. 95-464, 95th Congress, 1st Session, pp. 412-413.[2] In addition, the Act (Section 16(b), 91 Stat. 976) and the legislative history (House Report, pp. 412-413) make clear that if States fail to carry out their plans of operation or fail to make satisfactory progress toward accomplishing efficiency and effectiveness goals, the Secretary would be required to withhold an appropriate share of administrative matching funds.

The Department believes it is the intent of the Act that State Plans of Operation provide a means for FNS to ensure that States administer the Program in a manner that is responsive to the needs of participants and potential participants, including members of Indian tribes living on reservations, and that States operate a program that is accountable to the Department. Since the implementing regulations of the Food Stamp Act of 1977, published October 17, 1978, 43 FR 47846, establish specific requirements that mandate the manner in which the

[1] Subsequent references herein to the "Act" or the "Food Stamp Act" shall be to the Food Stamp Act of 1977, as amended, Title XIII, Pub. L. 95-113, 91 Stat. 958, et seq., Sept. 29, 1977, unless otherwise indicated.

[2] Further references to the legislative history of the 1977 Food Stamp Act will be to this House Report unless otherwise indicated.

Program is to be administered, the Department proposes to use a standard agreement committing States to administer the Program in the manner prescribed by FNS instead of a detailed reiteration of the regulations to meet the legislative intent for plans of operation.

Program and Budget Summary Statement

The Department is proposing to replace the current State Food Stamp Program Budget Report and the current "Exhibit A" with a single Program and Budget Summary Statement. The purpose of this statement is to provide States a standard format for submitting a proposed budget for the next Federal fiscal year and to provide program managers with a concise form for immediate reference relative to State's staff allocations (both current and proposed) and number of certification, hearing, and investigation/prosecution actions. FNS proposes to provide the form and instructions for completion. The form would be divided into eight specific functional program areas which are: Certification; Issuance; Performance Reporting System; Fair/Fraud Hearings; Fraud Investigations and Prosecutions; Outreach; Training; and Automatic Data Processing (ADP) activities with the reverse side containing an outline of the State organizational structure which administers the Program. The proposed regulations specify the information required on the form.

The Department also considered the plan of operation provisions contained in Part III of OMB Circular A-95 regarding the State Governor's 45-day review and also the question of public participation in the development of State Plans of Operation. These provisions will be discussed in more detail under specific headings.

The following is a description of each of the proposed components of the State Plan of Operation and the proposed submittal requirements for each.

Federal/State Agreement

The Department is proposing that the Federal/State Agreement be a standard legal agreement between the State and USDA. The agreement, as proposed, contains three basic terms to which the State must agree. The terms are: (1) that the State agency agrees to administer the program in accordance with the Food Stamp Act and regulations issued pursuant to the act, and to implement the FNS approved State Plan of Operation; (2) the Civil Rights Compliance Statement; and (3) an assurance that the program will be administered in a manner that is responsive to the special needs of American Indians on reservations. The agreement would also commit FNS to pay its share of administrative costs and to carry out any other responsibilities delegated to the Secretary in the Food Stamp Act.

The agreement would be signed by the State Governor or authorized designee and the appropriate FNS Regional Administrator. The Department is proposing that the agreement shall be submitted to FNS within 60 days of final publication of this rulemaking and shall remain in effect until terminated by either the State agency or FNS.

The major change to current procedures is that the proposed budget would be submitted to FNS on August 15 except for the first year in the form of the Program and Budget Summary Statement. For the first year, a date will be set in the final rule depending on actual publication. The Department is proposing to require eight specific functional program areas and an "other" category. The form contains a separate column for direct and indirect costs. The direct costs are salaries; and "other" costs include such items as travel expenses, costs of materials, rent, equipment, etc. which are for the specific purpose of administration of the Food Stamp Program. Salaries would be reported as follows: salaries for eligibility workers and supervisory staff (certification); salaries for cashiers and supervisors (State-run issuance); salaries for quality control reviewers, management evaluation reviewers, data analysis staff, corrective action planning, monitoring, and reporting staff, and supervisors in the Performance Reporting System; salaries for State level and local level staff, reported separately for Fair and Fraud Hearings; salaries for investigators, supervisors, and prosecutors, if appropriate; salaries for State and local outreach staff; salaries for State and local training staff; salaries for State and local ADP staff; and "other" staff salaries for each of these categories reported as one cost and any staff performing State agency functions which cannot be included in any of the designated functional program areas, for instance, management positions at the State or local levels with overall supervisory responsibilities, such as a Food Stamp Program Director. The indirect costs are those incurred jointly for the purpose of administering several programs and a pro rata share is assigned to the Food Stamp Program. Indirect costs include overhead costs such as equipment, rent, etc. incurred and distributed by the Statewide Cost Allocation Plan which are independent of the actual workload processing. Workload processing refers to activities directly involved in the certification of applicant households and issuance of coupons to such households.

The Program and Budget Summary Statement should be of particular interest to State agencies. The Department encourages a careful review of the regulations on these matters by interested parties.

Organizational Chart

The Department is proposing that the organization chart will provide most of the data submitted currently on the Exhibit A of the Plan of Operation. This outline will provide FNS current information as to the State's administrative structure responsible for overall program operations and would include: position of the head of the State agency responsible for administering the Food Stamp Program in relation to the overall State organizational structure; description of the organizational structure through which the State agency will administer and operate the Food Stamp Program including whether the Program is State, County, locally or regionally administered and whether workers have single or multi-program functions; funding arrangement (State, county, local) for State agency portion of administrative costs; position within the State organizational structure of the Performance Reporting System (PRS) coordinator; and if quality control reviewers have single or multi-program functions; identification of the person or panel designated as the hearing authority and whether the same officials conduct both fair and fraud hearings; the organizational entity responsible for corrective action; position of the training coordinator and whether this is a full or part-time position.

Planning Documents

The following are brief descriptions of the planning documents which are proposed as a part of the State Plan of Operation. In addition, the proposed submittal dates of each document are included.

State Corrective Action PLan

The Department will establish the due date for the initial State Corrective Action Plan in the final Performance Reporting System regulations. The plan is discussed in detail in those regulations. (See 44 FR 21504). The primary changes in the corrective action process are in the format of the plan, submittal requirements, and the distinction between deficiencies which are to be addressed in either the State Corrective Action Plan or the Project

Area Corrective Action Plan. The Department is proposing that the initial State Corrective Action Plan shall remain in effect until such time as all deficiencies in program operations have been eliminated, with States submitting updates to FNS for approval within 60 days of identification of new deficiencies. In the development of the new system, the Department intends to reduce paper work flow and decrease preparation and approval time; thereby placing a greater emphasis on correcting deficiencies. The Department also intends that this type of process will enable a closer coordination between the budget and the corrective action plan.

Outreach Plan

The Outreach Plan would be submitted to FNS for approval no later than July 1 of each year. The Outreach Plan would now be required one time per year rather than semiannually as required by the current regulations. Specific requirements for the Outreach functions, as well as requirements for the Outreach Plan, are included in the proposed regulations published on April 10, 1979 (44 FR 21541).

Disaster Plan (Reserved)

Proposed regulations on Disaster Plans are currently being drafted and will be issued separately from this rulemaking. The submittal procedures which may include prior public comment will be included in those regulations.

Nutrition Education Plan

The Department wishes to encourage nutrition education efforts in the States in addition to those specifically required in Sections 11(e)(15) and 11(f) of the Act. For this reason, the Department is proposing that if States elect to request Federal matching funds to conduct nutrition education programs for Food Stamp Program participants, a Nutrition Education Plan shall be submitted to FNS for approval prior to the funding of the nutrition education program. The Department is proposing that the plan, which would be a new requirement, contain the number and position of staff that will be performing nutrition education. The position of the staff refers to the individual's occupational specialty such as nutritionist, food program specialist, home economist, public information specialist, etc. In addition, the Department proposes that States describe the type of activities that will be used in conducting nutrition education programs. The Department intends that nutrition education programs should be directed to Food Stamp Program applicants and participants and should not conflict with USDA Extension Service efforts in the State. Federal financial management reviews will include an examination of these activities to ensure that staff and related activities funded by FNS are directed to Food Stamp Program applicants and participants. The initial Nutrition Education Plan would be submitted and have FNS approval prior to the expenditure of FNS funds and would then be submitted annually.

State Governor's 45 Day Review

In the revision of the State Plan of Operation requirements, the Department also considered the plan of operation provisions contained in Part III of OMB Circular A-95 regarding the requirement that State Plans of Operation must be submitted to the State Governor allowing for a 45 day review and comment period. The Department is proposing that only the Federal/State Agreement be subject to the 45 day review and comment period, not the supporting planning documents. The Federal/State Agreement formalizes those portions of the State Plan of Operation which are currently subject to the Governor's review. Therefore, the proposal would maintain the status quo. The individual planning documents on particular food stamp program aspects such as Outreach and Nutrition Education, would be treated as attachments to the Plan of Operation that are now submitted directly to FNS for approval.

Public Comment

In revising the State Plan of Operations requirements, one of the Department's basic concerns was public comment into the development of the State Plan of Operation. Therefore, the Department carefully analyzed and evaluated existing methods used by States in soliciting public comment as well as carefully weighing other methods.

Since the Department is proposing to revise the basic structure of the State Plan of Operation from a single document to a plan consisting of several components, it was necessary to determine first which components of the plan should require public comment prior to submittal to FNS. In making this determination, the Department primarily considered which components directly impact on the public versus those components that pertain strictly to State administration where the State is bound by the Act or FNS regulations. The Department concluded that the Outreach Plan and the Nutrition Education Plan directly affect the public and should require public comment prior to submittal to FNS and that the other components, are mandated in general by the Act or FNS Regulations. Therefore, the Department believed that since the FNS regulations have been promulgated through proposed rulemaking, it would not be necessary to mandate that States issue those areas again for public comment. State agencies may provide the public with the opportunity to comment on all State Plan of Operation components provided that the documents are submitted to FNS within the timeframes established by the regulations.

The Department would welcome comments about the components of the State Plan of Operation which should be issued for public comment. The Department then carefully analyzed the methods to be used in obtaining public comment on the Outreach, and Nutrition Education Plans. Methods for obtaining public comment which were considered by the Department included: procedures set out in State Administrative Procedures Act; review of the plans by State Welfare Advisory Councils; publication of the proposed plans in the media which has sufficient coverage to assure reaching all local areas; public hearings at the State and local levels; notification to all food stamp households; and notification to all Outreach groups. In considering these methods, the Department was concerned about implementation schedules, costs to the State and the Department, and maximum benefits to participants and potential participants.

The Department proposes that all State agencies annually publicize in the media when the Outreach Plan is available for public comment prior to submittal to FNS. The Nutrition Education Plan would be made available for public comment prior to the State agency's request for food stamp administrative matching funds. State agencies would then have the following options for obtaining public comment: following the procedures of the State Administrative Procedures Act if the Act includes procedures for obtaining public comment on food stamp matters; publication of a summary of the applicable proposed plan or guideline in the media including instructions on how to obtain a complete copy of the plan or guideline, as well as notification to all Outreach groups, inviting public comment for at least 30 days; or Statewide public hearing(s) at least once per year.

Public comment on the Outreach Plan must be solicited no later than the beginning of fiscal year 1981 under the proposed rule.

The Department encourages direct and continuing dialogue between State agencies and the public, and encourages States to use additional methods for obtaining public comment. Examples of other methods include but are not limited to welfare advisory councils and other existing non-statutory procedures for soliciting public comment.

These proposed regulations include procedures on submission of revisions to the budget portion of the Program and Budget Summary States. These procedures were formerly in § 275.12 and do not add any additional requirements.

Operating Guidelines

In addition to the State Plan of Operation and its components, the Department proposes that State agencies be required to submit operating guidelines. The guidelines would cover in more detail the administrative procedures in the Plan and provide a description of the technical means the State uses to carry out the terms of the Plan. The operating guidelines would cover the following topics: certification of households; issuance, accountability, and reconciliation; a description of the Performance Reporting System; a description of the training program; a description of the methods to be used for obtaining public comment; a description of the fair/fraud hearing procedures used if such procedures are not discussed in the certification material; and a description of the ongoing consultation with Indian tribal organizations regarding the operation of the program on reservations. Directions in these program areas are currently provided by States mainly through the handbooks, manuals, and instructions used to carry out these functions. This rulemaking proposes to continue this method of submission unless the State uses FNS developed material.

The operating guidelines would, as now, be submitted to FNS for approval. FNS would be required to either approve or deny the operating guidelines, provide comments, or acknowledge receipt of the guidelines and request further information within 30 days of receipt. If no action was taken by FNS within those 30 days, the State agency could assume that the guidelines are approved. The guidelines would provide FNS with a readily available management tool to evaluate actual day-to-day operations. They are also an important means to ensure that the material in use by eligibility workers, issuance personnel, etc. are in compliance with the Act, the regulations and the State Plan.

While the operating guidelines would not be submitted for the Governor's review due to their technical nature and volume, certain specific portions would be subject to public comment. The same methods for soliciting comments on Plans which were discussed earlier are also proposed to be used for the operating guidelines. The proposed regulations list the areas which would be required to be open to public participation but state that these are the minimum requirements. These areas are: procedures implementing FNS approved waivers of regulatory requirements; procedures implementing regulatory provisions that allow the State a choice (e.g., State or local level hearings; the type of issuance system); procedures in the training program that provide for public participation at formal training sessions and for training of outreach workers and volunteers. Public comment on these areas and any others the State chooses to include must be solicited no later than the beginning of FY 1981. Further, this rulemaking proposes that these parts of the operating guidelines be available for comment every other year. The State may request comment on the operating guidelines concurrent with requesting comments on components of the State Plan of Operation.

The Department is responsible for ensuring that State agency administration of the Program operates efficiently and effectively and provides maximum service to participants and potential participants. Therefore, regulations issued pursuant to the Food Stamp Act of 1977 are specific in terms of standards for the implementation of new program requirements. However, due to the tremendous variances in States' climates, and geographies and other circumstances, there may be instances in which States may need to deviate from certain of these requirements to more effectively and efficiently administer the Program.

This rulemaking proposes that FNS be authorized to grant waivers from specific requirements under the following conditions: (1) the regulations cannot be implemented due to extraordinary temporary situations such as a sudden increase in caseload due to loss of SSI cash-out status; (2) FNS determines that the deviation would result in more effective and efficient administration; (3) a unique geographic or climatic condition exists that precludes effective implementation of a regulatory provision, or (4) it would further a demonstration being conducted by another Federal agency. The proposed regulations also delineate the circumstances under which FNS would not approve a waiver, for example, where the waiver would be inconsistent with the Act, would result in denial, reduction, or delay of benefits, or would deny a participant or potential participant due process protection under the Act or regulations. The regulations further provide limitations on the period of time for which a deviation is authorized.

Waivers would be approved for up to one year with extensions granted if the State submits appropriate justification with the State Plan. The regulations propose the minimum contents for the request for a waiver which must justify and demonstrate to FNS the need for the waiver in terms of making Program administration more effective and efficient. In addition, the request for a waiver would have to discuss how the caseload or potential caseload would be affected, including identification of the characteristics (i.e., urban; rural; specific geographic areas) of the affected caseload. Further, a time period for which the waiver is needed would be required to be indicated and a thorough explanation of the proposed alternative given. The waiver request would be subject to public comment if FNS determines that the waiver will have major direct impact on participants.

It is proposed that exceptions to the service standards be handled in accordance with the provisions of § 272.5, rather than under the waiver provisions in § 272.3(c).

Reconciliation Report

The Department proposes to add a new report for all State agencies with ATP systems. This report would record the results of the reconciliation of transacted ATP's to the HIR master file. The identification of all unreconciled ATP's will enable the States and the Department to establish the liabilities for those issuances and will allow the Department to monitor any corrective action or claims action taken by the State agencies. The Department is proposing that the report, Form FNS-46, Reconciliation Report, would be completed at the level of the State agency which maintains the HIR master file and conducts the reconciliation activity. The report would be submitted to FNS so that it would be received by FNS not later than 45 days following the end of the report month.

State Agency Liabilities and Federal Sanctions

Part 276 of the regulations proposes State agency financial liabilities and the types of fiscal sanctions and other actions FNS would apply pursuant to

the authority of Sections 11 (g) and (h) and 16(b) of the Food Stamp Act whenever the State agency fails to operate the program in an efficient and effective manner. In addition, this part pursuant to Section 14 of the Act provides that State agencies aggrieved by a claim shall be afforded a review by the Department.

The sections included in this part are: (1) Responsibilities and Rights; (2) State Agency Liabilities; (3) Negligence; (4) Suspension/Disallowance of Administrative Funds; (5) Injunctive Relief; and (6) Administrative Review Process. The section establishing absolute State agency liabilities should be of special interest to State agencies, coupon issuers, and bulk storage points; the administrative review process should be of special interest to State agencies whereas the other sections are of interest to State agencies and the public in general.

In the development of these regulations, the Department carefully considered the current liability and sanction policies in addition to new requirements mandated by the Food Stamp Act of 1977. The Department encourages interested parties to carefully review and examine these proposed regulations and submit specific and detailed comments. Sections 276.3, 276.6, and 277.15 (then designated as 277.16) have already been published as emergency final rules. §§ 276.3 and 276.6 were published on June 8, 1979 (44 FR 33380) and § 277.15 (as § 277.16) on August 10, 1979 (44 FR 47037). There are only minor differences between these sections as now proposed and as previously published, and comments already received in response to the earlier rulemakings will be considered.

Responsibilities and Rights

In order to ensure compliance with the Food Stamp Act, regulations issued Pursuant to the Act and the FNS approved State Plan of Operation, the Department proposes that FNS bill State agencies for certain losses. The claims would be based on either coupon losses or negligence. Coupon losses would result in absolute liability on the part of the State agency. For overissuances of coupons resulting from State agency negligence or fraud, the State agency would pay to FNS a sum equal to the amount issued as a result of the negligence or fraud as required by Section 11(h) of the Act. A State agency's failure to administer an efficient and effective program would, under the proposed rules, result in suspension of administrative funds which could be returned if corrective actions were completed in a timely fashion, a disallowance of administrative funds which would not be returned to the State agency or both a suspension and a disallowance of funds. In addition, Section 11(g) of the Act authorizes the Secretary to request the Justice Department to seek injunctive relief to bring a State agency into compliance with Federal law or regulation. To effectuate the provisions of Section 14 of the Act, the proposed regulations would provide procedures under which State agencies would have the right to appeal all claims and be afforded a review by a designee of the Secretary. State agencies would also have the right to receive a notice of a claim and an opportunity to submit information in support of their position within 10 days of the date of delivery of the notice. Section 14 of the Act also provides that State agencies may seek judicial review of any final administrative determination on a claim against a State agency. In addition to a general statement of responsibilities and rights regarding claims and sanctions against State agencies, the proposed regulations contain a detailed explanation of each component in the process.

State Agency Liabilities

The Food Stamp Act of 1977 provides that, "the State agency shall be responsible to the Secretary for any financial losses involved in the acceptance, storage, and issuance of coupons." Section 7(f), 91 Stat. 968, 7 U.S.C. 2016(f). The Department is proposing to retain most of the regulatory language regarding State agency financial liabilities for losses of this type. The proposed regulations have deleted references to cash losses from cash collected as a purchase requirement since a cash purchase requirement will no longer be collected from participants.

The coupon shortages and losses which the Department is proposing to hold States liable for would be determined from the Food Coupon Accountability Report (Form FNS-250) and its supporting documents and the Reconciliation Report (Form FNS-46). The coupon shortages and losses are specified in § 276.1(a)(1) of the regulations. Examples include but are not limited to: coupon losses as a result of cashier errors such as errors in counting coupon books; thefts; and duplicate ATP transactions caused by State agency error, and losses of coupons due to unexplained causes. Also included in this category of State agency liabilities specifically imposed by Section 7(f) of the Act are those losses identified in § 273.18 of the October 17, 1978 regulations which identified certain program losses for which the participant will not be held liable. Examples of these types of losses include but are not limited to: Federal losses because a household continued to receive food stamp allotments after its certification period expired; transaction of expired ATP cards; and overissuances to households which did not receive food stamp benefits at a reduced level because its public assistance grant changed and the State agency failed to act. These liabilities may be determined from audits, investigations, Performance Reporting System Reviews and other Federal reviews. The Department believes that these provisions are appropriately included in the liability policy since the Act delegates to State agencies the responsibility for the issuance of coupons.

The Department is also proposing that States are liable for cash losses when monies collected by the State agency from participant claims have been lost, stolen, or otherwise not remitted to FNS by the State agency. This provision is proposed to be added to the liability policy to encourage States to exercise controls over monies collected from participant claims to ensure that such monies are remitted to FNS promptly.

In response to concerns expressed by State agencies in the past, the Department proposes a provision in the court suit liabilities section which provides that whenever FNS is sued in a Federal Court in any matter involving its administration of the Program, all State agencies would be advised of such suit and of the areas of Food Stamp Program policy that are in the complaint.

Negligence

The Food Stamp Act of 1977 provides that "If the Secretary determines that there has been negligence or fraud on the part of State agency in the certification of applicant households, the State shall, upon request of the Secretary, deposit into the Treasury of the United States, a sum equal to the face value of any coupon or coupons issued as a result of such negligence or fraud." Section 11(h), 91 Stat. 973, 7 U.S.C. 2020(h). The major difference in this provision from the current law is that the term "gross negligence" has been changed to "negligence." The *House Report* indicates that by reducing "gross negligence" to "negligence", FNS should be able to collect an increased number of program losses. *House Report*, p. 398. When determining losses, the Department intends to use the negligence provision when an actual

loss has been documented, or when the loss of funds has been determined through the use of a statistically valid projection. The proposed regulations cite three circumstances in which FNS would impose a negligence billing.

The first circumstance would occur when the State agency disregards any food stamp program requirement contained in the Act of 1977, FNS regulations issued pursuant to the Act, or the State agency's FNS-approved State Plan of Operation and the action or failure to take action results in a loss of Federal funds. The Department intends this provision to include actions in which the State agency disregards a requirement or the State agency negligently fails to fulfill a requirement. An example is a State agency which does not implement the new resource requirement on licensed vehicles, or does not establish appropriate claims against household who have been overissued benefits.

The second action that would lead FNS to use the negligence billings is an instance where a State agency implements a procedure which deviates from FNS requirements without obtaining prior FNS approval and the procedure results in a loss of Federal funds. As an example, if a State agency which used an inflated and unapproved standard utility allowance and households were thereby overissued benefits, FNS could proceed with a negligence billing to recover the value of the overissuance of coupons.

The third general action which could result in a negligence billing would be a State agency's failure to implement and maintain proper controls over the certification of households and issuance of coupons and such failure results in a loss of Federal funds. Examples of this failure include but are not limited to: instances where State agencies fail to maintain proper computer controls; fail to adequately supervise certification procedures or fail to provide security and control over accountable documents.

The Department may establish negligence billings when an identifiable loss of Federal funds occurs as a result of circumstance noted above and the loss is not an absolute State agency liability specified in § 276.2. While the regulations reflect the legislative changes from gross negligence to negligence, the Department does not intend to establish a negligence billing for all losses of Federal funds. Consideration would be given to the circumstances causing the loss and the steps the State agency took to prevent the loss from recurring before determining negligence. However, the right to make a negligence determination is reserved solely to FNS. FNS may also process negligence billings concurrently with sanctions against State agencies affecting administrative funds.

If a State agency fails to implement or maintain a required control and the failure results in a loss of Federal funds, FNS may also issue warnings and intitiate the sanction process.

The Department intends that failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit as specified in § 277.16(c).

The proposed regulations also contain a fraud provision specifying that employees of the State agency committing fraud shall be subject to the penalties prescribed in § 271.5(b). The Department also intends that State agencies are liable for Federal losses as a result of fraud on the part of an employee or an agent of the State agency.

Suspension/Disallowance of Administrative Funds

Section 16(b) of the Act provides in part that if the Secretary determines that a State has failed without good cause to meet any of the Secretary's standards established pursuant to that section, or has failed to carry out the approved State Plan of Operation, the Secretary shall withhold such portion of the Federal funds otherwise payable to the State for administrative cases as he determines to be appropriate. The *House Report* states that this penalty is intended to provide a significant financial incentive for States to improve overall program management. The report further provides that States shall have the opportunity to demonstrate "good faith" efforts of accomplishing their plans before funds would be reduced. Therefore, the Department is proposing to retain a warning process and to add a suspension provision to ensure that States have the opportunity to correct problems prior to losing the Federal share of administrative funds through a sanction process. Suspension of funds is defined as withholding funds from the letter of credit pending compliance by the State agency with a specific program requirement. Under the proposed suspension provision, if FNS suspends funds, and the State agency comes into compliance within specified timeframes, the money held in suspension would be restored. However, if the State agency fails to comply, the funds would be disallowed from the Letter of Credit.

Disallowance is defined as the permanent removal of administrative funds from the State's Letter of Credit based on a determination by FNS that a State agency has been inefficient or ineffective in its administration of a food stamp program requirement. Under the proposal, FNS would also stipulate the amount of the disallowance which could be some or all of the Federal share of one or more cost categories in the State agency's food stamp administrative budget. In addition, FNS would have the option of taking money from another cost category or all or a portion of the entire Letter of Credit if the disallowance is based on a finding that the State agency failed to take a required action. The Department further proposes that funds may be disallowed after having been suspended or funds may be disallowed in certain cases without first being suspended.

In the warning process, the Department is proposing to eliminate the informal warning and to use instead an advance notification prior to the issuance of the formal warning. The difference is that the advance notification does not contain a predetermined time period that FNS will allow States to correct a deficiency or deficiencies. The Department is proposing that the period of the advance notification may vary depending on the nature of the deficiency. There may be instances where FNS would allow 30 days for a satisfactory response prior to issuing a formal warning, while there may be instances in which FNS would issue an advance notification and allow as short a period as 24 hours for correction of a deficiency before issuing a formal warning. In deleting the informal warning, States retain a reasonable period of time to correct deficiencies and have a new opportunity to challenge a decision by FNS through an administrative review following the disallowance of Federal funds.

The content of the formal warning remains basically the same in these proposed regulations except that a formal warning would now indicate whether FNS plans to suspend or disallow Federal funds, or possibly take both actions.

State agencies shall be afforded an opportunity to have an administrative review after being notified by certified mail or personal service that Federal funds have been disallowed. State agencies would not have the opportunity to appeal suspension action under the administrative review process because until funds are disallowed no claim actually exists.

Injunctive Relief

The Food Stamp Act provides in part that, "If the Secretary determines that in the administration of the Food Stamp

Program there is a failure by a State agency to comply with any of the provisions of this Act, the regulations issued pursuant to this Act, or the State Plan of Operation, the Secretary shall immediately inform such State agency of such failure and shall allow the State agency a specified period of time for the corrective action of such failure. If the State agency does not correct such failure within that specified period, the Secretary may refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance by the State agency." Section 11(g), 91 Stat. 973, 7 U.S.C. 2020(g). This statutory provision is self implementing and does not require regulatory promulgation. It is restated in the regulations, however, in order that they will set forth a comprehensive listing of potential sanctions against State agencies for deficiencies in the operation of the program.

The Department interprets this provision as a mechanism for enforcing Federal policies in an expedited manner. As a result, the regulatory proposal for implementing injunctive relief is quite broad in scope. The Department is proposing to request injunctive relief to enforce compliance with the Food Stamp Act of 1977, regulations issued pursuant to the Act or an FNS approved State Plan of Operation. FNS would provide a written notice to the State agency that it will seek injunctive relief if corrective action is not taken within a specified time period. The timeframe for corrective action, according to this proposal, would be at the Secretary's discretion and would be based on the nature of the deficiency. For example, the Secretary may require corrective action for a violation of Food Stamp law or policy in as short a time period as 24 hours before injunctive relief is sought.

The Department is also proposing that the Secretary can seek injunctive relief with or without the prior imposition of other sanctions contained in these regulations. The Department would also be able to use injunctive relief concurrently with negligence billings and/or suspensions or disallowances of administrative funds.

Administrative Review Process

Section 14 of the Food Stamp Act of 1977 provides that if a claim is asserted against a State agency, the State agency may file a request for a review of the claim by such person or persons designated by the Secretary. This procedure has previously applied only to retail food stores or wholesale food concerns.

The Department is proposing that State agencies, aggrieved by a claim asserted against them by FNS, may appeal the case to the Secretary and be afforded a review by a designee of the Secretary. The Secretary would have discretion in designating an official to review appeals and may designate different officials for each case. The review authority may be an official with prior knowledge of the case being reviewed.

In addition to prescribing a State agency's right to a review of claims against them, these regulations propose that State agencies may request a hearing for claims based on negligence or based on a disallowance for failure to meet the corrective action plan. The Department believes that negligence claims and disallowances for failure to meet the corrective action plan may require a more detailed review of the circumstances with an opportunity for the State agency to respond to allegations of deficiencies. These claims may be more satisfactorily resolved if a State agency representative is entitled to present a case in person. In this way, the Department would be able to make a sound decision about a claim based on potentially complex circumstances. The Department is not proposing to allow a hearing based on all claims because this would require a significant commitment of manpower to hear claims that are more readily resolved by written factual information. Additional opportunity for hearings may also cause delays in the claim process.

Federal Reimbursements for Administrative Costs

The proposal sets forth several changes in Federal reimbursement of administrative costs to State agencies operating the Food Stamp Program. These changes would implement Section 16(a), Section 16(c) and Section 17(a) of the Food Stamp Act of 1977. The major proposals include: increasing the Federal reimbursement rate from 50 percent to 75 percent for State administrative costs associated with investigations, prosecutions, and fraud hearings; increasing the Federal reimbursement rate for State agency administrative costs from 50 percent to 60 percent when the State's cumulative allotment error rates with respect to eligibility, overissuance, and underissuance, as calculated in the Quality Control Program, are less than five percent; and allowing for an increase of administrative costs for Food Stamp Program operations on Indian reservations at levels higher than 50 percent. Although the proposal would reorganize and make additions to current regulations to implement the Food Stamp Act of 1977, it retains most of the administrative costs regulations published on December 17, 1974 and, in general, corresponds to requirements of Federal Management Circular (FMC) 74-4 and A-102. The proposed revisions and additions to current administrative cost regulations will increase the efficiency and effectiveness with which the Program is administered, assist State agencies in prosecutive and investigative actions by providing additional Federal reimbursement, and provide State agencies with an incentive to reduce the incidence of errors made in eligibility determinations, overissuance and underissuance of coupons. The following is a more detailed description of the subsections dealing with reimbursements for administrative costs.

General Purpose and Scope

Section 277.1 sets forth the purpose, scope and applicability of this proposal. The language and requirements in this Section are basically unchanged from the regulations currently in effect.

Definitions

Section 275.2, Cash Depositories, in current regulations, has been redesignated as § 277.8. A new § 277.2, Definitions, has been added in this proposal.

Definitions have been consolidated in this Section in order to improve the organization and structure of the Regulations. No basic changes in language were made.

Single State Agency Requirements

Section 275.5 of current regulations has been deleted from this proposal to conform to OMB Circular A-102 requirements.

Budget and Budget Revision Procedures

Section 275.12 of current regulations is now § 277.3 of this proposal. The content requirements of § 275.12 in current regulations has been deleted from this proposal. The preparation, content, submittal and revision requirements for the State Food Stamp Budget is specified in § 272.2 (State Plan of Operation).

Funding

Section 275.7, Payments to State Agencies, of current regulations has been redesignated § 277.4, Funding, in this proposal. This section sets allowable cost standards for activities of State agencies in Food Stamp Administration.

The Food Stamp Act of 1977 requires major changes from current regulations in Federal reimbursements for 50 percent of all allowable administrative

costs incurred by State agencies. To implement the Act, this section provides for reimbursing specific areas of administrative costs incurred by State agencies at a rate higher than 50 percent. Under this section, FNS will increase to 60 percent a State agency's federally funded share of administrative cost as provided in Section 16(c) of the Act. This increase will be based on the State agency's reporting a cumulative allotment error rate of less than five percent with respect to basic program eligibility, overissuance and underissuance as determined by quality control, and FNS validation reviews conducted in accordance with § 275.23. The Department believes that the authority to increase Federal funding from 50 to 60 percent of State administrative costs reflects congressional intent to reduce quality control errors by offering higher Federal funding as an incentive. This increased lump sum payment will be made to those State agencies for allowable administrative costs incurred during the period for which the reduced error rate was reported and validated. The Department believes that this increase in Federal financial participation will provide State agencies with an incentive to reduce error rates and manage the program more effectively and efficiently.

Section 16(a) of the Food Stamp Act of 1977 authorized the Secretary to pay 75 percent of the costs of State Food Stamp Program investigations and prosecutions. Section 277.5 allows for this increased funding level. Increased funding is discussed in greater detail with regard to § 277.15 of this proposal.

Section 277.4 also allows for increased administrative funds to administer the Food Stamp Program on Indian reservations as authorized by Section 16(a) of the Act. Other language and requirements previously contained in § 275.12 remain unchanged.

Method of Payment

Section 275.11, Payment Requirements, of current regulations is now § 277.5, Method of Payment, in this proposal. Except for moving the definitions in this section to § 277.2, no basic changes in language or requirements have been made.

Standards for Financial Management System

Section 275.8, Standards for State agency and subagency financial management systems, of current regulations, has been changed to § 277.6 in this proposal. In addition, requirements regarding State agency control and management of bonus costs will be published in this section after compliance with proposed rulemaking procedures.

Cash Depositories

Section 275.2 of current regulations has been redesignated § 277.7 in this proposal. No substantive changes in language or requirements have been made, although the Section has been internally restructured.

Bonding and Insurance

Section 275.3 of current regulations has been redesignated § 277.8 in this proposal and contains no changes.

Administrative Costs Principles

Section 275.16, Cost Principles, of current regulations is redesignated § 277.9, Administrative Cost Principles. To implement Pub. L. 95–113, this section sets forth the policies and procedures governing State agencies' reimbursement rates for funding. USDA will reimburse State agencies for 75 percent of allowable costs incurred after September 30, 1978, for State fraud hearings, prosecutions and investigations. These allowable costs will be outlined in our discussion of § 277.16. Additionally, as of October 1, 1978, a State agency's federally funded share of administrative costs will be increased to 60 percent when the State agency reports a cumulative allotment error rate of less than five percent with respect to basic program eligibility, overissuance, and underissuance, as determined by quality control and FNS had conducted reviews in accordance with § 275.23. The cost eligible at the 60 percent reimbursement rate must be incurred during the period for which the cumulative allotment error rate of less than five percent was achieved as certified by FNS.

This section also references the higher level of funding for administering programs on Indian reservations, set forth in Part 281.

Under the Food Stamp Act of 1964, as mandated, public assistance households were categorically eligible for food stamps without regard to income and resources. Through mutual agreement with the Department of Health, Education, and Welfare any costs which a State might incur in processing the food stamp portion of the grant eligibility determination did not have to be separately allocated from the worker's activities in providing the public assistance benefits. The two Departments intend to continue this procedure to simplify the problem of cost allocation at the State level. Accordingly, certification costs involved with AFDC households also receiving food stamp benefits are considered as allowable for AFDC reimbursement. Therefore, this section proposes that any costs associated with determining the food stamp eligibility of AFDC households be considered unallowable costs for FNS reimbursement.

Program Income

Section 275.6, Program funds related income, of current regulations is redesignated § 277.10, Program income. No changes in substantive language or requirements was made.

Financial Reporting Requirements

Section 275.9 of current regulations is redesignated § 277.11, in this proposal with no changes in language or requirements.

Retention and Custody for Records

Section 275.4, Retention and custodial requirements for records, is redesignated § 277.12. No substantive changes in language or requirements have been made.

Property

Section 275.14 is redesignated § 277.13. No substantive changes in language or requirements have been made.

Food Stamp Investigations and Prosecutions

Section 16(a) of the Food Stamp Act of 1977 authorizes the Secretary to pay each State agency not less than 75 percent of the costs of State Food Stamp Program investigations and prosecutions. The Department has determined that State agencies should receive 75 percent of matching funds for allowable costs incurred in fiscal year 1979 and 1980, to encourage fraud investigations and prosecutions to further deter and prevent abuse in the program. After fiscal year 1980, the Department plans to review State investigation and prosecution activities to determine if the 75 percent reimbursement rate is an appropriate level of funding. Since State agencies are already incurring costs relating to fraud investigations and prosecutions under the revised Food Stamp Program, the Department has published an emergency final rulemaking which authorizes increased funding for investigations, prosecutions and fraud hearings retroactive to October 1, 1978 (comprehensive and significant revisions in the Food Stamp Program become effective on October 17, 1978 (43 FR 47846). October 1, 1978 is the first day of fiscal year 1979. For reasons of administrative efficiency and convenience, these funding

determinations will be made on a fiscal year basis.

In order to qualify for the 75 percent matching funds, the Department is establishing standards and procedures which require State agencies to precisely identify which organizations, activities and functions are claimed at the higher 75 percent rate. For example, if the State Attorney General's Office handles food stamp fraud investigations, the State agency would identify the units which specifically work on food stamp fraud matters and investigations, describe the relevant food stamp investigative and prosecutorial activities and detail how much time is spent on these food stamp activities. The regulations further provide that State agencies must demonstrate their authority to conduct those investigations and prosecutions and must describe the investigative units access to investigative reports and other applicable records, upon request. The material required by these regulations will be submitted concurrently with the State agency's budget as provided under current regulations.

The rules list some activities which are eligible or ineligible for 75 percent funding. Activities to be funded at the 75 percent level are payroll, equipment, space and other support cost of qualified employees assigned specifically to work on food stamp fraud hearings, and to investigate or prosecute criminal offenses or civil wrongdoings involving loss to the Food Stamp Program, job related training costs for employees assigned to these duties and the cost of fraud hearings.

Although the Department believes that functions such as quality control reviews, administrative reviews, establishment and collection of claims against households, and verification of eligibility information are important to the program, the Department does not believe it is appropriate or useful to include the cost of these activities as part of the investigations or prosecution costs for which Congress authorized the 75 percent reimbursement rate.

In December 1977, representatives of legal and investigative units of several State and Federal agencies met to discuss the level and impact of funding for food stamp investigations and prosecutions. Included in recommendations by this group, a copy of which is filed at Program Development Division, FNS, 500 12th Street, SW, Washington, D.C., Room 658, was the recommendation that FNS provide qualification standards for employees conducting investigations. FNS will promulgate qualification standards at a later date. The public is invited to submit written comments relevant data and recommendations regarding the establishment by FNS of qualification standards for investigative employees.

Suspension, Disallowance and Program Closeout

Section 275.13, Suspension or cancellation of payments and program closeout, has been redesignated § 277.16, Suspension, Disallowance and Program Closeout. Language changes have been made to clarify the meaning of this section. Additionally, the requirements and procedures pertaining to suspension or disallowance of payments will now be specified in Section 276 (State Agency Liability and Federal Sanctions).

Comment Period

The Department believes that public participation in policy development serves as an information source for developing and assessing program alternatives. Because public participation serves as a means of improving the effectiveness of Department programs, public input is particularly important prior to the development of regulations. Consequently, the public was afforded an opportunity to comment on Pub. L. 95-113 in nationwide public hearing conducted by the Department in October 1977. Additionally, public participation will be provided by the proposed regulations herein.

All comments already received on previously published sections of these regulations will be considered along with newly submitted comments. Therefore, commentors need not resubmit their comments to be assured of consideration, although any additional comments are welcome.

During the 60-day comment period, the public is invited to submit written comments, relevant data, objections, and recommendation regarding the proposed regulations. Comments should cite the appropriate section of the regulations and specify reasons for all objections and recommendations. All comments, objections, relevant data, and recommendations will be given careful consideration before final rules are published.

Therefore, the Department proposes that Parts 272, 274, 276, and 277 be amended as follows:

1. In part 272, §§ 272.2 and 272.3 are revised to read as follows:

§ 272.2 Plan of Operation.

(a) *General Purpose and Content.* (1) *Purpose.* State agencies shall plan and budget program operations each year and establish objectives for the next fiscal year. When planning program operations for the next fiscal year, State agencies shall consider major corrective action objectives, existing program deficiencies, State established goals, and FNS guidance, if any. In its planning activities and in developing its budget, State agencies should use the State Corrective Action Plan as a primary planning source. Past accomplishments, existing problem areas, and proposed corrective action objectives may be evaluated through the corrective action process and used in the preparation of the State Plan of Operation, including the budget for the next fiscal year.

(2) *Contents.* The basic component of the State Plan of Operation is the Program and Budget Summary Statement and its narrative attachments. The requirements for this statement are specified in § 272.2(c). In addition, § 272.2(d) specifies the major planning documents, including the State Corrective Action Plan, which shall be a part of the State Plan of Operation. The Federal/State Agreement, an additional part of the State Plan of Operation, shall be the legal agreement between the State and the Department. This agreement commits the State to administer the program in accordance with the Food Stamp Act of 1977, regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation.

(b) *Federal/State Agreement.* The wording of the Federal/State Agreement shall be as follows:

The State of and the Food and Nutrition Service (FNS) U.S. Department of Agriculture (USDA) hereby agree to abide by the terms of this contract and to act in accordance with the provisions of the Food Stamp Act, implementing regulations, and the FNS-approved State Plan of Operation. The State and FNS (USDA) further agree to fully comply with any changes in Federal law and regulations.

Terms:

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food Stamp Act and in the manner prescribed by regulations issued pursuant to the Act; and implement the FNS approved State Plan of Operation.

2. Comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), section 11(c) of the Food Stamp Act of 1977, the Age Discrimination Act of 1975, (Pub. L. 94-135) and the Rehabilitation Act of 1973 (Pub. L. 93-112, Sec. 504) and all requirements

imposed by the regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be excluded from participation in, be denied the benefits of or be otherwise subject to discrimination under the Food Stamp Program.

3. Implement the program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the program for members of the tribe on reservations.

FMS agrees to:

1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food Stamp Act.

Date _____

Signature _____

(Governor or Authorized Designee)

Date _____

Signature _____

(Regional Administrator, FNS)

(c) *Program and Budget Summary Statement.* The Program and Budget Summary Statement is the State Food Stamp Program proposed budget and provides program managers with a standard format for use as an immediate reference of certain program operations. The form is divided into the eight functional areas of Certification; Issuance; Performance Reporting System; Fair/Fraud Hearings; Fraud Investigations and Prosecutions; Outreach; Training; and Automatic Data Processing (ADP) and is again divided into data areas for actions, staff (current and proposed), and budget. The reverse side of the Program Budget Summary Statement shall contain a chart outlining the State organizational structure through which the State will administer the Food Stamp Program. FNS shall provide the forms, with instructions, to the States. The following information shall be reported on the form:

BILLING CODE 3410-30-M

U.S. DEPARTMENT OF AGRICULTURE
FOOD AND NUTRITION SERVICE

PROGRAM AND BUDGET SUMMARY STATEMENT

ORGANIZATIONAL OUTLINE ON REVERSE

Fiscal Year

State

FUNCTION	CURRENT					PROPOSED				
	ACTIONS			STAFF		BUDGET			STAFF	
ELIGIBILITY DETERMINATIONS	APPROVALS	DENIALS				DIRECT Salaries	DIRECT Other	INDIRECT		
CERTIFICATIONS						$	$	$		
RECERTIFICATIONS										
ISSUANCE										
PERFORMANCE REPORTING SYSTEM										
HEARINGS	NO.	INDIVIDUALS DISQUALIFIED	DOLLAR VALUE	STATE	LOCAL				STATE	LOCAL
FAIR HEARINGS										
FRAUD HEARINGS										
INVESTIGATIONS	NUMBER									
OUTREACH										
TRAINING										
PROSECUTIONS	NO.	DOLLAR VALUE INVOLVED	DOLLAR VALUE RECOVERED							
STATE										
LOCAL										
DP										
OTHER										
TOTALS						$	$	$		

FORM FNS-366 (10-79)

BILLING CODE 3410-30-C

Organizational Outline

As a minimum, the following information shall be included on the outline:

Position of the head of the State agency responsible for administering the Food Stamp Program in relation to the overall State organizational structure;

Description of the organizational structure through which the State agency will administer and operate the Food Stamp Program including whether the Program is State, county, locally or regionally administered and whether workers have single or multi-program responsibilities;

Funding arrangement, State, county, local for State agency portion of administrative costs;

Position within the State organizational structure of the Performance Reporting System (PRS) coordinator including whether quality control reviewers have single or mult-program functions and whether the PRS coordinator is full or part-time;

Identification of the person or panel designated as the hearing authority;

Organizational entity responsible for corrective action;

Position of the training coordinator and whether this is a full or part-time position.

(1) *Actions.* This column provides the number of actions performed in three of the functional areas: eligibility determinations; hearings; and investigation/prosecutions. The figure shall be the total of the actual number of actions for the period October through June and an estimate of the number of actions for the period July through October. The actual fiscal year totals for each of these areas shall be provided with the Quarterly Expenditure Report (Form FNS-269) submitted for the quarter October through December. The information is provided as follows:

(i) *Eligibility determinations.* (A) Certifications—Indicate the number of certifications approved and denied.

(B) Recertifications—Indicate the number of recertifications approved and denied (denials include cases closed for failure to respond).

(ii) *Fair/Fraud Hearings.* (A) Fair Hearings—Indicate the number of fair hearings conducted.

(B) Fraud Hearings—Indicate the number of fraud hearings; the number of individuals disqualified; the dollar value of coupons obtained fraudulently as determined by administrative fraud hearings.

(iii) *Investigations/Prosecutions.* (A) Investigations—Indicate number of investigations conducted.

(B) Prosecutions—Indicate number of State/local prosecutions; dollar value of coupons fraudulently obtained that resulted in prosecutions; dollar value of coupons recovered.

(2) *Staff.* The two columns for staff shall indicate the full-time person-year equivalents for nonclerical personnel for each functional area. The current and proposed staff shall be listed separately. Staff that must be included is as follows:

(i) Certification—eligibility workers and supervisors;

(ii) State Issuance—cashiers and supervisors;

(iii) Performance Reporting System—quality control reviewers, management evaluation reviewers, data analysis staff, corrective action staff, and supervisory staff;

(iv) Fair/Fraud Hearings—local and State level hearing officials;

(v) Investigations and Prosecutions—investigators and supervisors;

(vi) Outreach—local and State level workers and supervisors;

(vii) Training—local and State level staff and supervisors.

(3) *Costs.* This column is the total State Food Stamp Program Budget. The funding levels for Federal food stamp administrative matching funds are specified in § 277.4. The costs space includes identical columns for the current Federal fiscal year budget and the proposed State Food Stamp Program Budget for the next Federal fiscal year. These columns contain the following:

(i) *Direct costs.* Direct costs are those that can be identifed specifically with the Food Stamp Program. The direct costs column is divided providing for:

(A) Salaries and benefits for employees involved in each of the functional program areas which are correlated directly with the staff designation requirements specified in paragraph (c)(2) of this section;

(B) "Other" costs including such items as travel expenses, cost of materials, rent, equipment, etc. which are for the specific purpose of administration of the Food Stamp Program.

(ii) *Indirect costs.* Indirect costs are those that are incurred jointly for the purpose of administering several programs and a pro rata share is assigned to the Food Stamp Program. Part 277, Appendix "A" of the regulations prescribe in detail the principles involved in determining indirect costs.

(4) *Organizational chart.* As a minimum, State agencies shall include the following on the organizational chart which is on the reverse side of the Program and Budget Summary Statement:

(i) The position of the head of the State agency responsible for administering the Food Stamp Program in relation to the overall State organizational structure;

(ii) A description of the organizational structure through which the State agency will administer and operate the Food Stamp Program including whether the Program is State, county, locally or regionally administered and whether the workers have single Food Stamp Program or multi-program functions;

(iii) A description of the funding arrangement by which, State, county, local jurisdictions will contribute to the State agency portion of administrative costs;

(iv) The position within the State organizational structure of the Performance Reporting System (PRS) coordinator including whether quality control reviewers have single Food Stamp Program or multi-program review responsibilities and whether the PRS coordinator is full or part-time;

(v) The identity of the person or panel designated as the hearing authority and whether the same officials conduct both fair and fraud hearings; and

(vi) The position of the training coordinator and whether this a full or part-time position;

(vii) The identity of the organizational entity responsible for corrective action as required by § 275.2.

(5) *Attachments.* The following shall be attachments or addenda to the Program and Budget Summary Statement:

(i) an explanation and justification of the method used in computing the number of staff (full-time person-year equivalents) and corresponding salaries for each of the functional program areas included on the statement;

(ii) the special plan required by § 277.15 when requesting Federal funding at the 75 percent level for investigation and prosecution activities.

(d) *Planning documents.* The following planning documents shall be attached to the State Plan of Operation:

(1) Corrective Action Plan as required by § 275.16;

(2) Outreach Plan as required by § 272.6;

(3) Disaster Plan as required by § 280.6;

(4) Nutrition Education Plan if the State agency elects to request Federal Food Stamp Program administrative matching funds to conduct nutrition education programs. The Nutrition Education Plan shall contain:

(i) The number and position of staff that will be conducting nutrition education;

(ii) Description of activities in the nutrition education program;

(iii) Assurance that nutrition education programs for which USDA provides Food Stamp Program administrative matching funds are conducted exclusively for the benefit of Food Stamp Program applicants and participants and do not conflict with USDA Extension Service nutrition education efforts in the State.

(e) *Submittal Requirements.* States shall submit to the appropriate FNS Regional Office each of the components of the Plan of Operation for approval within the time frames established by this paragraph. Approval or denial of the document may be withheld pending review by FNS. However, if FNS fails to either approve, deny, or request additional information within 30 days, the State agency may assume the document is approved.

(1) The Federal/State agreement shall be signed by the Governor of the State or authorized designee and shall be submitted to FNS within 60 days of the date that this Part is published as a final rulemaking and shall remain in effect until terminated by either the State agency or FNS.

(2) The Program and Budget Summary Statement shall be submitted by the State agency to FNS for approval each year no later than August 15.

(3) The State Corrective Action Plan shall be submitted by the State agency to FNS for approval no later than the deadline prescribed in Part 275, Performance Reporting Regulations. The preparation, content, reporting, and updating requirements of this plan are specified in § 275.16 of the regulations.

(4) The Outreach Plan shall be signed by the head of the State agency and submitted to FNS for approval each year no later than July 1.

(5) Disaster Plan (reserved).

(6) Nutrition Education Plan shall be signed by the head of the State agency and submitted to FNS for approval prior to funding of nutrition education activities at any point in time the State agency elects to request Federal administrative matching funds to conduct nutrition education programs. The Plan shall then be submitted on an annual cycle corresponding to its initial submission.

(f) *Public comment.* (1) States shall provide the opportunity for public comment in the development of certain components of the State Plan of Operation prior to submittal of the document to FNS for approval. States shall carefully review, analyze, and consider the public comments and retain copies of the comments for at least one year to ensure availability for review. The documents which shall require public comment are:

(i) State Outreach Plan;

(ii) Nutrition Education Plan, if submitted;

(2) State agencies shall publicize in the media that the components of the Plan of Operation specified in paragraph (f)(1) are available for public comment. State press releases and other methods of publicizing the Plan shall contain addresses for obtaining further information, and shall specify which of the following required methods for soliciting public comment shall be used:

(i) State Administrative Procedures Act if the Act includes procedures for obtaining public comment on food stamp matters;

(ii) Publication in sufficient media sources to ensure general coverage in all project areas of a summary of the applicable proposed plan or guideline and of instructions on how to obtain a complete copy of the plan or guidelines, as well as separate notification to all Outreach groups inviting public comment for at least 30 days;

(iii) Statewide public hearing(s) at least once per year.

(3) State agencies shall solicit public comment for the parts of State Plan specified in paragraph (f)(3) of this section no later than the beginning of Federal fiscal year 1981. In addition, State agencies shall ensure that those parts of the State Plan are available for public comment every other year thereafter. State agencies may solicit public comment on State Plans concurrently with solicitation of public comment for the components of the Operating Guidelines as required in § 272.3(d).

(4) State agencies may also use other methods for obtaining public comment, in addition to the minimum requirement specified above, to encourage a continuing dialogue between the public and the State thereby ensuring maximum service to participants and potential participants. Examples of other methods include but are not limited to:

(i) A review by Welfare Advisory Councils;

(ii) Existing non-statutory procedures for soliciting public comment.

(5) State agencies shall consult on an ongoing basis with the tribal organization of an Indian reservation about those portions of the State's Plan of Operation pertaining to the special needs of members of the tribe.

(g) *Revisions.* Revisions to any of the planning documents or the Program and Budget Summary Statement shall be prepared and submitted to the appropriate FNS Regional Office in the same manner as the original document. However, revisions to the budget portion of the Program and Budget Summary Statement shall be submitted as follows:

(1) Program funds. (i) For program funds, State agencies shall request prior approvals promptly from FNS for budget revisions whenever:

(A) The revision indicates the need for additional Federal funding.

(B) The program budget is $100,000, or less, and the cumulative amount of transfers among program functions exceeds or is expected to exceed five percent of the program budget. The same criteria apply to the cumulative amount of transfers among functions and activities when budgeted separately for program funds provided to a subagency, except that FNS shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(C) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(D) The revisions pertain to the addition of items requiring prior approval by FNS in accordance with the provisions of the applicable cost principles specified in Part 277 Appendix A of the regulations.

(ii) No other changes to the program fund budget require approval from FNS. Examples of changes which do not require Federal approval are: the use of State agency funds in furtherance of program objectives over and above the State agency minimum share included in the approved program budget; and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(iii) The requirements of paragraph (g)(1)(i)(B) of this section may be waived by FNS provided that:

(A) No different limitation or approval requirement may be imposed; and,

(B) FNS shall in no case permit a transfer which would cause any Federal appropriation, or part, thereof, to be used for purposes other than those intended.

(2) *Authorized funds exceeding State agency needs.* When it becomes apparent that the funds authorized by the letter of credit will exceed the needs of the State agency, FNS will make appropriate adjustments in the letter of credit.

(3) *Method of requesting approvals.* When requesting approval for budget revisions, State agencies shall use the same format as the budget portion of the Program and Budget Summary Statement used in the previous submission. However, State agencies

may request by letter the approvals required by paragraph (g)(1)(i)(D).

(4) *Notification of approval or disapproval.* Within 30 days from the date of receipt of the request for budget revisions, FNS shall review the request and notify the State agency whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, FNS shall inform the State agency in writing as to when the State agency may expect the decision.

§ 272.3 Operating Guidelines.

(a) *Coverage of operating guidelines.* State agencies shall prepare and provide, to staff responsible for administering the program, written operating procedures for:

(1) Certification of households, including but not limited to:

(i) application processing;

(ii) nonfinancial eligibility standards;

(iii) financial criteria and the eligibility determination;

(iv) actions resulting from eligibility determinations;

(v) determining eligibility of special situation households as specified in § 273.11;

(vi) additional certification functions such as processing changes during certification periods and reporting requirements for households;

(vii) lost benefits/claims against households; and

(viii) fair/fraud hearings.

(2) Issuance, accountability, and reconciliation;

(3) Performance Reporting System, including quality control and management evaluation reviews;

(4) Description of training program, including a listing of who conducts training, to whom and how often training is provided;

(5) Method for obtaining public comment;

(6) Fair/fraud hearing procedures if not included in the Certification Handbook.

(7) Description of the ongoing consultation process with the tribal organization of an Indian reservation about the State Plan of Operation and Operating Guidelines in terms of the special needs of members of the tribe and the method to be used for incorporating the comments from the tribal organization into the State Plan of Operation and Operating Guidelines.

(b) *Submittal and approval.* (1) State agencies may use the manuals, handbooks, instructions, guidelines provided by FNS or develop and submit to FNS for approval alternate procedures and forms.

(2) FNS shall provide each State agency with approval, denial or appropriate comments on operating guidelines within 30 days of the receipt of such guidelines. FNS may acknowledge receipt of the guidelines and withhold approval or denial of the guidelines pending further review. However, if FNS fails to either approve, deny, request additional information, or acknowledge receipt of the guideline within 30 days, the State agency may assume the guideline is approved.

(3) Amendments to any of the operating guidelines shall be submitted to FNS for approval prior to implementation by the State agency.

(c) *Waivers.* (1) The Administrator of the Food and Nutrition Service may authorize waivers to deviate from specific regulatory provisions. Requests for waivers may be approved only in the following situations:

(i) the specific regulatory provision cannot be implemented due to extraordinary temporary situations such as a sudden increase in the caseload due to loss of SSI cash-out status; or

(ii) FNS determines that the waiver would result in a more effective and efficient administration of the program; or

(iii) unique geographic or climatic conditions within a State preclude effective implementation of the specific regulatory provision (i.e., the use of fee agents in Alaska to perform many of the duties involved in the certification of households including conducting the interviews); or

(iv) another Federal program is conducting a demonstration or pilot project and the Department determines that a waiver of Food Stamp Program Regulations will further the purposes of this project.

(2) FNS shall not approve request for waivers when:

(i) the waiver would be inconsistent with the provisions of the Act;

(ii) the specific regulatory provision is a national eligibility criterion;

(iii) the waiver would result in a denial, reduction, or delay of benefits;

(iv) the waiver would deny a participant or potential participant any due process protection afforded by either the Act or regulations.

(v) the waiver would result in a procedure that would not be in compliance with the processing standards specified in § 273.2(g) and (i) and § 273.12(c).

(3) FNS shall approve waivers for a period not to exceed one year. Extensions may be granted provided that States submit appropriate justification as part of the State Plan of Operation.

(4) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver and convincingly demonstrate the need for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the program. At a minimum, requests for waivers shall include but not necessarily be limited to:

(i) reasons why the waiver is needed;

(ii) portion of caseload or potential caseload which would be affected and an identification of characteristics such as geographic, urban, rural concentration of the caseload affected;

(iii) anticipated impact on service to participants or potential participants who would be affected;

(iv) anticipated time period for which the waiver is needed; and

(v) thorough explanation of the proposed alternative provision to be used in lieu of the waived regulatory provision.

(5) FNS is authorized to require States to solicit public comment, in accordance with § 272.2(f)(2), on waivers which have major direct impact on participants.

(6) The provisions of this paragraph do not apply to exceptions to service standards approved by the State agency or FNS in accordance with § 272.5.

(d) *Public Input and Comment.* States shall solicit public input and comment into certain aspects of the Operating Guidelines using one of the methods required by § 272.2(f)(2).

(1) At a minimum the following parts of the Operating Guidelines shall be made available for public input and comment:

(i) procedures which implement FNS approved waiver of regulatory requirements; and,

(ii) procedures which implement the areas in the regulations that allow States discretion including but not necessarily limited to:

(A) procedures which indicate whether the State is going to use a single or multiple utility standard;

(B) procedures which indicate whether the State is going to use State or local level hearings;

(C) procedures implementing the method for monitoring local level decisions;

(D) method of handling delays caused by households; and

(E) the type of issuance system.

(iii) procedures in the training program which provide for public at formal training sessions, training for State agency outreach workers, and training or volunteers and other organizations the State agency uses for

outreach, pre-screening and providing program information.

(2) State agencies shall solicit public comment for the parts of the Operating Guidelines specified in paragraph (d)(1) of this section no later than the beginning of Federal fiscal year 1981. In addition, State agencies shall ensure that those parts of the Operating Guidelines are available for public comment every other year thereafter. State agencies may solicit public comment on Operating Guidelines concurrently with solicitation of public comment for the components of the State Plan of Operations as required by § 272.2(f)(1).

PART 274—ISSUANCE AND USE OF FOOD COUPONS

2. In part 274, a new subparagraph 274.8(a)(5) is added to read as follows:

§ 274.8 State agency reporting and destruction of unusable coupons.

(a) State agency reporting

* * * * *

(5) Each State agency operating an ATP issuance system shall report monthly to FNS on the reconciliation of the transacted ATP's against the HIR Master File. This report shall be made by completing Form FNS-46, Food Stamp Reconciliation Report. (Appendix A to this section provides a proposed format for this report.) The report shall be prepared at the level of the State agency where the actual reconciliation of the transacted ATPs to the HIR master file takes place. This report shall be submitted to FNS so that it will be received by FNS no later than 45 days following the end of the report month.

BILLING CODE 3410-30-M

RECONCILIATION REPORT

Reconciliation of ATP's to Master File Due 45 days after end of Report Month	1. Project Code	2. Report for: Year _____ Month _____
3. Reorder ☐	4. Reconciliation Point Title and Location	5. Project Areas for which this Point Performs Reconciliation _____ Number
6. "X" One ☐ Initial Submission ☐ Resubmission of FNS Rejected Report ☐ Revised Report *(Complete Item 7)*	7. For Revised Reports Only — Indicate Section(s) containing correction - I _____ II _____ No of revised reports submitted - *(including this one)*	

I TRANSACTION SUMMARY

	NUMBER OF ATP's	VALUE OF ATP's
8. Unmatched ATP's		
9. Duplicate ATP transactions in which both original and replacement ATP's are transacted by the same households		
10. Counterfeit ATP's Transacted		
11. Altered ATP's Transacted		
12. Other *(Explain below, Item 13)*		

13. Explanation of "Other" *(Item 12)*

II STATE AGENCY LIABILITIES

	NUMBER OF ATP's	VALUE OF ATP's
14. Blank ATP's Lost or Stolen from the State Agency and Subsequently Transacted		
15. Expired ATP's Transacted		
16. Out-of-State ATP's Transacted		
17. Duplicate ATP transactions caused by State Agency error or malfeasance		

18. Remarks

I certify that this report was compiled in accordance with the procedures set forth in the Food Stamp Program Regulations. I further certify that this report is true and correct and I understand that I make these certifications under penalty of law as prescribed in Section 6 of the Food Stamp Act of 1977, as amended.

DATE	SIGNATURE	TITLE

FORM FNS-46 (Draft)

BILLING CODE 3410-30-C

3. Part 276 is revised to read as follows:

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

Sec.

276.1 Responsibilities and rights.
276.2 State agency liabilities.
276.3 Negligence or fraud.
276.4 Suspension/disallowance of administrative funds.
276.5 Injunctive relief.
276.6 Administrative review process.

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

§ 276.1 Responsibilities and rights.

(a) *Responsibilities.* State agencies shall establish and maintain secure control over coupons and cash for which the regulations designate them accountable. Any shortages or losses of coupons or cash shall be an absolute State agency liability and the State agency shall pay to FNS upon demand the amount of the missing coupons or cash regardless of the circumstances of the loss. State agencies are also charged with preventing losses of Federal funds in the administration of the Food Stamp Program. A determination of negligence or fraud by FNS shall result in a billing equal to the amount of coupons issued as a result of the negligence or fraud. State agencies shall also administer an efficient and effective program within Federal law and regulations. An FNS determination of a State agency's failure to do so may cause a suspension or disallowance of administrative funds. FNS may also seek injunctive relief along with a suspension or disallowance or independently if a State agency is determined by FNS to be in violation of the Food Stamp Act of 1977, as amended, regulations issued pursuant thereto or the FNS approved State Plan of Operation.

(b) *Rights.* State agencies have the right to appeal all claims and be afforded an administrative review by a designee of the Secretary. State agencies also have the right to receive a notice of a claim and to submit information in support of its position within 10 days of the date of delivery of the notice. State agencies may also seek judicial review of any final administrative determination by the designee of the Secretary.

§ 276.2 State agency liabilities.

(a) *General Provisions.* Not withstanding any other provision of this subchapter, State agencies shall be responsible to FNS for any financial losses involved in the acceptance, storage and issuance of coupons. State agencies shall pay to FNS, upon demand, the amount of any such losses.

(b) *Coupon Shortages, Losses, Unauthorized Issuances and Overissuances.* (1) State agencies shall be liable under this section for coupon shortages and losses and certain unauthorized issuances which occur after the coupons have been accepted by receiving points within the State, and which occur during movement of the coupons between bulk storage points and issuers within the State;

(2) Coupon shortages and/or losses for which State agencies shall be liable include, but are not limited to:

(i) thefts;

(ii) embezzlements;

(iii) cashier errors (e.g., errors in counting coupon books by the personnel of any issuance office);

(iv) coupons lost in natural disasters to the extent the State cannot establish that the coupons were destroyed and not redeemed;

(v) unexplained causes.

(3) State agencies shall be liable for the following unauthorized issuances:

(i) acceptance of expired ATP cards;

(ii) acceptance of out-of-State ATP cards;

(iii) acceptance of ATP cards lost by, stolen or embezzled from the State agency or from any point under agreement or contract with the State agency;

(iv) duplicate ATP transactions caused by State agency error.

(4) Overissuances for which the State is liable are:

(i) Issuances to households whose certification periods have expired to the extent that an actual overissuance has been documented or an amount has been derived by a statistical projection;

(ii) Overissuances to households caused by State agency failure to process a change in food stamp benefits to correspond with a change in public assistance benefits;

(iii) Overissuances to households where documentation in the form of a casefile, issuance document, or other authorization which supports the validity of the allotment cannot be located and the lack of such documentation creates an apparent overissuance. (However, if the State can produce such documentation, no loss will be charged.)

(5) Coupon shortages and losses shall be determined from the Food Coupon Accountability Report (Form FNS–250) and its supporting documents, and the Reconciliation Report (Form FNS–46). Losses of Federal dollars as a result of overissuances of coupons shall be determined from audits, Performance Reporting System reviews, Federal reviews, investigations, etc.

(c) *Cash Losses.* State agencies are liable to FNS for cash losses as determined by audits, Performance Reporting System reviews, Federal reviews, investigations, etc. when monies collected by the State agency from participant claims have been lost, stolen, or otherwise not remitted to FNS by the State agency in accordance with § 273.18(f).

(d) *Court Suit Liabilities.* (1) In the event that any State agency is sued by any person(s) in a State or Federal Court in any matter which involves its administration of the Food Stamp Program, the State agency shall immediately notify FNS that suit has been brought and shall furnish FNS with copies of the original pleadings. In any such case which involves an attack on or interpretation of the Food Stamp Act, or these regulations, the State agency shall, upon request of FNS, take such action as is necessary properly to join the United States and/or appropriate officials of the Federal Government, such as the Secretary of Agriculture or the Administrator of the Food and Nutrition Service, as parties to the suit. In the event that a State agency fails to comply with the provisions of this paragraph and is ordered by a court to take actions under the program which are determined by FNS to be inconsistent with the Food Stamp Act, or these regulations, the State agency shall, upon demand by FNS, pay to FNS an amount equal to the value of all coupons issued pursuant to the court order.

(2) If FNS is sued by any person(s) in a Federal Court in any matter involving its administration of the program, all State agencies shall be advised of such suit, and of the areas of Food Stamp Program policy that are involved in the litigation.

(e) *State Agency Payment to FNS.* State agencies shall be billed for the exact amount of losses specified in this section and failure to remit may result in offsets to the Letter of Credit in accordance with § 277.16(c).

§ 276.3 Negligence or fraud.

(a) *General.* If FNS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions.* (1) FNS may determine negligence on the part of the State agency when:

(i) The State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, regulations issued pursuant to the Act, or the FNS-approved State Plan of Operations and a loss of Federal funds results;

(ii) The State agency takes action to implement procedures which deviate from FNS requirements without obtaining prior FNS approval and the implementation of such procedures results in a loss of Federal funds;

(iii) The State agency fails to implement and maintain proper controls over the certification of households and issuance of coupons and such failure results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds, FNS may use actual documented amounts or amounts which have been determined through the use of a statistically valid projection.

(3) FNS shall use all information available in determining negligence on the part of a State agency. Management information sources include but are not limited to:

(i) State and Federal Performance Reporting System reviews;

(ii) State and Federal Audits and Investigations;

(iii) Financial Management Reviews;

(iv) State Corrective Action Plans;

(v) Any of the required Food Stamp Program reports.

(4) Failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit in accordance with § 277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FNS for the amount of loss of Federal funds as a result of fraud. Failure by the State agency to remit payment on demand by FNS may result in offsets to the Letter of Credit in accordance with § 277.16(c).

§ 276.4 Suspension/disallowance of administrative funds.

(a) *General Provisions.* FNS shall make a determination of the efficiency and effectiveness of a State's administration of the Food Stamp Program in accordance with § 275.23. When making this determination, all information available to FNS relative to a State's administration of the program shall be used, including but not limited to: Performance Reporting System reviews, Federal reviews, audits, investigations, corrective action plans, financial management reviews, and information received from the public. Upon a determination that the State agency has failed to comply with the Food Stamp Program requirements established by the Food Stamp Act, FNS regulations, or the FNS approved State Plan of Operations, failed to submit complete and accurate reports to FNS within the timeframes established by the regulations, failed to take actions proposed in an FNS approved State Corrective Action Plan within the specified timeframes, or knowingly submitted an incorrect report on its operation of the program, the State agency shall be warned that suspension and/or disallowance of funds is being considered. After the State agency receives a warning, FNS may either suspend or disallow administrative funds or take both actions in sequence, depending on the statement in the warning.

(b) *Suspension.* Suspension is an action by FNS to temporarily withhold all or a portion of the Federal share of one or more of the cost categories contained in the State agency's budget for administration of the Food stamp Program pending corrective action by the State agency or a decision by FNS to disallow the suspended funds. FNS shall suspend funds in accordance with § 277.16.

(c) *Disallowance.* Disallowance is an action by FNS to permanently disallow all or a portion of the Federal share of one or more cost categories contained in the State agency's budget for administering the Food Stamp Program when such costs are normally allowable but are determined by FNS to be nonreimbursable according to paragraph (e) of this section. In accordance with Section 277.16, FNS has the option of disallowing funds in another cost category or all or a portion of the entire Letter of Credit if the disallowance is based on a finding that the State agency failed to take a required action. FNS may disallow funds after previously suspending such funds or immediately following the expiration of the formal warning under the conditions specified in paragraph (e) of this section.

(d) *Warning Process.* Prior to taking action to suspend or disallow Federal funds, except those funds which are disallowed when a State agency fails to adhere to the cost principles of Part 277 and Appendix "A", FNS shall provide State agencies written advance notification that such action is being considered and a formal warning of the possibility of such action if the State agency does not respond to the satisfaction of FNS to the advance notification. However, where States have failed to meet the objectives as proposed in an FNS-approved corrective action plan, FNS may omit the advance notification and immediately issue the formal warning.

(1) *Advance Notification.* Immediately upon becoming aware that a deficiency or deficiencies in a State agency's administration of the program may warrant suspension and/or disallowance of Federal funds, FNS shall advise the State agency in writing of the deficiency and provide a specific period of time for correction of such deficiency or deficiencies. The time period allowed the State agency for corrective action shall be at the option of FNS and may vary according to the nature of the deficiency.

(2) *Formal Warning.* FNS shall issue a formal warning to a State agency if the State agency fails to correct the deficiencies to the satisfaction of FNS within the timeframes specified by the advance notification.

(i) The formal warning shall include:

(A) Specific description of the deficiency explaining how the State is out of compliance with Program requirements;

(B) The amount of Federal funds that will be suspended and/or disallowed or an estimate of the amount of Federal funds if actual costs are not available.

(C) A statement as to whether Federal funds will be suspended, disallowed or possibly both, if appropriate; and

(D) A statement of FNS' willingness to assist the State agency in resolving the problem for a period of up to 30 days following issuance of the formal warning.

(ii) The State agency shall have 30 days to submit evidence that it is in compliance or to submit a corrective action proposal including the date the State will be in compliance.

(iii) When the deficiency cannot be corrected within 30 days following the issuance of the formal warning, but the State agency responds with an acceptable plan for correcting the deficiency, FNS shall hold the formal warning in abeyance pending completion by the State of actions agreed upon within the specified timeframes.

(iv) FNS shall cancel a formal warning when the State agency submits evidence to the satisfaction of FNS that:

(A) The deficiency has been eliminated; or

(B) Corrective action has been completed and the deficiency eliminated within the specified timeframes when the formal warning was held in abeyance.

(e) *Suspension/Disallowance of Funds.* The Administrator of the Food

and Nutrition Service shall notify the State agency by certified mail or personal service that administrative funds have been suspended or disallowed in accordance with § 277.16 when:

(1) The State agency fails to respond to the deficiencies cited in a formal warning within 30 days;

(2) The response by the State agency to the deficiencies cited in the formal warning is unsatisfactory to FNS;

(3) The State agency fails to meet its corrective action commitments when a formal warning has been held in abeyance.

(f) *Appeals.* After FNS has taken action to disallow Federal funds, the State agency may request an appeal in accordance with the procedures specified in § 276.6.

§ 276.5 Injunctive relief.

If FNS determines that the State agency has failed to comply with the Food Stamp Act, FNS regulations, or the FNS approved State Plan of Operation, the State agency shall be immediately informed of such noncompliance and provided a specific period of time to correct the failure. If the State agency does not correct the failure within the time period specified, the Secretary may refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance by the State agency. The Secretary shall have the flexibility to determine the time periods that States have to take corrective action. The Secretary may request injunctive relief concurrently with negligence billings and sanctions against State agencies affecting administrative funds.

§ 276.6 Administrative review process.

When FNS asserts a claim against a State agency, the State agency may appeal the case and be afforded a review by a designee of the Secretary of the USDA. FNS claims against State agencies may be as a result of financial losses involved in the acceptance, storage, and issuance of coupons, charges of negligence, and disallowance of Federal funds for State agency failure to comply with the Act, regulations or the FNS-approved State Plan of Operation. A State agency aggrieved by a claim as a result of a negligence charge or the disallowance of Federal funds under § 276.4 shall have the option of requesting a hearing before a designee of the Secretary to present its position or accepting a review of the record and any written submission to be presented by the State agency. Administrative review of all other claims shall be through a review of the record and written submissions.

(a) FNS shall provide a notice by certified mail or personal service when asserting claims against State agencies. The notice shall specify whether or not the State agency may request a personal hearing.

(b) State agencies aggrieved by claims asserted against them may file a written request with the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250, for an opportunity to submit information in support of its position within 10 days of the date of delivery of the notice. If the State agency does not request a review or hearing within 10 days of delivery of the notice, the administrative decision on the claim shall be final.

(c) Upon receipt by the Secretary of a request for review, or hearing, FNS shall provide the State agency with a written acknowledgement of the request.

(1) The acknowledgement shall include the name and address of the official designated by the Secretary to review the claim;

(2) The acknowledgement shall also notify the State agency that within 10 days of receipt of the acknowledgement, the State agency shall submit information in support of its position.

(d) When a hearing is afforded pursuant to this subsection, FNS has up to 60 days of receipt of the request to schedule and conduct the hearing and shall advise the State agency of the time, date and location of the hearing at least 10 days in advance of the hearing.

(e) When a hearing is afforded, the authority designated by the Secretary shall make a final determination within 30 days after the hearing, and the final determination shall take effect 30 days after the delivery of the notice of this final decision.

(f) When a hearing is not afforded, the authority designated by the Secretary shall review information presented by a State agency which requests a review and make a final determination within 30 days after the receipt of the State agency's information. The final determination shall take effect 30 days after the delivery of the notice of this final decision to the State agency.

(g) State agencies aggrieved by the final determination may obtain judicial review by filing a complaint against the United States within 30 days after the date of delivery of the final notice of determination requesting the court to set aside the final determination.

(h) The administrative final determination shall remain in effect during the period the judicial review is pending unless the court temporarily stays such administrative action pending disposition of trial or appeal.

4. In Part 277, § 277.10 (g) and (h) are redesignated as Subpart H, "Modified Quality Control", § 275.24 (a) and (b). The remaining paragraphs of 277 are renumbered and revised as follows:

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Sec.
277.1 General.
277.2 Definitions.
277.3 Budget and budget revision procedures.
277.4 Funding.
277.5 Methods of payment.
277.6 Standards for financial management systems.
277.7 Cash depositories.
277.8 Bonding and insurance.
277.9 Administrative costs principles.
277.10 Program income.
277.11 Financial reporting requirements.
277.12 Retention and custody of records.
277.13 Property.
277.14 Procurement standards.
277.15 Food Stamp investigations and prosecutions.
277.16 Suspension, disallowance and program closeout.

Appendix A—Principles for determining Costs Applicable to Administration of the Food Stamp Program by State Agencies

Authority: 91 Stat. 958, as amended (7 U.S.C. 2011–2027).

§ 277.1 General purpose and scope.

(a) *Purpose.* This Part establishes uniform requirements for the management of Food Stamp Program Administrative funds provided to State agencies and sets forth principles for claiming costs of activities paid with Food Stamp Program administrative funds.

(b) *Scope and Applicability.* Upon compliance with the provisions of this Part, payments to State agencies will be made for cost(s) incurred for administration of the Food Stamp Program. To insure maximum practical uniformity, deviation(s) by a State agency from this Part may be authorized only when necessary to meet program objectives, to conserve program funds, or when essential to the public interest. However, any deviations from this Part must be authorized by the Administrator of FNS.

§ 277.2 Definitions.

For the purpose of this Part the term:

"Accrued expenditures" means the charges incurred by the State agency during a given period for liabilities incurred, benefits received or for goods and services used during this period. Actual payment or receipt of funds is not a consideration.

"Accrued income" means the net value of earnings during a given period resulting from services and goods provided whether or not payment has been realized.

"Acquisition cost" refers to nonexpendable personal property acquired by purchase and means the net invoice price of the property including any attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protection in-transit insurance, freight or installation shall be included in or excluded from acquisition cost in accordance with the State agency's regular accounting practices.

"Approval or authorization by FNS" means documentation evidencing consent prior to incurring specific costs.

"Applicable credits" refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

"Disbursements" refers to the transfer of funds by the State agency to pay for Food Stamp Program costs resulting from purchase or expired goods and services.

"Expendable personal property" means all tangible personal property other than nonexpendable property.

"FNS" means the Food and Nutrition Service.

"Food Stamp Program funds" means money, or property provided in lieu of money, paid for or furnished by FNS to a State agency.

"Funds available to the State agency" may include contribution from third parties including other Federal agencies.

"In-kind contributions" refers to the value of noncash contributions. Only when authorized by Federal legislation may property purchased with Federal funds be considered as a State agency's in-kind contribution. In-kind contributions may be for the value of real and/or nonexpendable personal property or the value of goods and services provided specifically to the project or program.

"Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of more than $300 per unit. A State agency may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

"Obligations" are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period which require payment.

"Offset" means a method to recover funds due FNS through use of the letter of credit system. Recovery is accomplished by accounting adjustments to increase Federal funds on hand or disbursed.

"OMB" means the Office of Management and Budget.

"Outlays" are the same as disbursements. Outlays may be reported on a cash or accrued expenditure basis.

"Personal property" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence) such as patents, inventions and copyrights.

"Program closeout" means the process by which FNS determines that all applicable administrative and financial processes have been completed by the State agency and FNS terminates the Food Stamp Program in the affected project area or areas.

"Project costs" are allowable costs as set forth in this Part.

"Real property" means land, land improvements, structure and appurtenances thereto, excluding movable machinery and equipment.

"State agency costs" means the State agency cash outlays from its funds available for Food Stamp Program administration. Unless authorized by Federal legislation, costs charged to other Federal grants or to other Federal contracts may not be considered as State agency costs reimburseable under this authority.

"Subagency" means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the Food Stamp Program and which is accountable to the State agency for the use of funds provided.

"Terms and conditions" means legal requirements imposed by the Federal Government under statute, regulations, contracts, agreements or otherwise.

"Unliquidated obligation" represents the amount of obligations not yet paid.

"Unobligated balance" means the portion of the Federal funds authorized less all allowable costs and upaid obligations of the State agency.

§ 277.3 Budgets and Budget Rivision Procedures.

The preparation, content, submittal, and revision requirements for the State Food Stamp Program Budget shall be specified in § 272.2. State agencies must submit a budget to FNS as part of the State plan each fiscal year. Upon approval of the budget by FNS, administrative funds will be provided.

§ 277.4 Funding.

(a) *General.* This section sets allowable cost standards for activities of State agencies in Food Stamp Program administration.

(b) *Federal reimbursement rate.* The base percentage for Federal payment shall be 50 percent of allowable Food Stamp Program State agency administrative costs.

(1) A 75 percent Federal reimbursement of allowable costs incurred for State fraud investigations, prosecutions, and fraud hearings upon presentation and approval of a State Plan Addendum as outlined in § 277.15.

(2) As of October 1, 1978, a State agency's federally-funded share of administrative costs shall be increased to 60 percent when the State agency has a cumulative allotment error rate of less than five percent with respect to basic program eligibility, overissuance, and underissuance as determined by quality control and FNS has conducted reviews in accordance with § 275.23. The costs eligible at the 60 percent reimbursement rate must be incurred during the period in which the cumulative allotment error rate of less than five percent was achieved.

(3) Funding of demonstration projects approved by FNS will be at a rate agreed to by FNS in accordance with the requirements outlined in Part 282.

(4) The reimbursement of administrative costs to State agencies administering programs on Indian reservations shall be in accordance with the requirements of Parts 281 and 283.

(c) *Matching costs.* State agency costs for Federal matching funds may consist of:

(1) Charges reported on a cash or accrual basis by the State agency as project costs.

(2) Project costs financed with cash contributed or donated to the State agency by other non-Federal public agencies and institutions.

(3) Project costs represented by services and real or personal property donated by other public agencies and institutions.

(d) All cash or in-kind contributions except as provided in paragraph (e) of this section shall be allowable as part of the State agency's share of program costs when such contributions:

(1) Are verifiable.

(2) Are not contributed for another Federally-assisted program, unless authorized by Federal legislation.

(3) Are necessary and reasonable for accomplishment of project objectives.

(4) Are charges that would be allowable under this Part.

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations.

(6) Are in the approved budget.

(e) The value of services rendered by volunteers or the value of goods contributed by third parties, exclusive of the State and Federal agencies, are unallowable.

§ 277.5 Methods of Payment.

(a) This section sets forth FNS methods for authorizing funds for State agencies.

(b) The "Letter of Credit" (SF-1193A) is the document by which an official of FNS authorizes a State agency to draw funds from the United States Treasury. This shall be the preferred method of payment for State agencies which receive at least $120,000 per year and meet the requirements prescribed in Attachment j of A-102.

(c) State agencies shall request payment(s) by submitting Request for Payment on Letter of Credit and Status of Funds Report (Treasury Form SF-183) to the appropriate United States Treasury Regional Disbursing Office with a copy to FNS.

(d) State agencies not meeting the requirements for the Letter of Credit method of payment shall be provided funds by Treasury check in accordance with the provisions of Treasury Circular 1075.

(e) Payments for proper charges incurred by State agencies will not be withheld unless such payments are suspended or disallowed pursuant to § 277.16. When a payment is withheld, payment adjustments will be made in accordance with § 277.16. When an indebtedness is to be collected, FNS will provide reasonable notice to the State agency, and will require appropriate accounting adjustments to cash balances for which the State agency is accountable to the Federal Government to liquidate the indebtedness.

§ 277.6 Standards for Financial Management Systems.

(a) *General.* This section prescribes standards for financial management systems in administering Food Stamp Program funds by the State agency and its subagencies or contractors.

(b) *Responsibilities.* Financial management systems for Food Stamp Program funds in the State agency shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of Program activities in accordance with Federal reporting requirements.

(2) Records which identify the source and application of funds for FNS or State agency activities supporting the administration of the Food Stamp Program. These records shall show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the State agency, its subagencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FNS or other determinations as specified in § 277.16 and the disposition of these amounts. Procedures must be in effect to prevent State agency claims for these costs under program administration.

(4) Effective control and accountability by the State agency for all Food Stamp Program funds, property, and other assets acquired with Food Stamp Program funds. State agencies shall adequately safeguard all such assets and shall assure that they are used solely for Food Stamp Program authorized purposes unless disposition has been made in accordance with § 277.13.

(5) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the State agency shall make drawdowns from the United States Treasury through a United States Treasury Regional Disbursing Office nearly as possible to the time of making the disbursements.

(6) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in Appendix A to this Part.

(7) Support and source documents for costs.

(8) State agencies must provide an audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for food stamp administration.

(9) Periodic audits by qualified individuals who are independent of those who maintain Federal Food Stamp Program funds. These examinations are intended to ascertain the effectiveness of the financial management control and reporting systems and internal procedures that have been established to meet the terms and conditions for Food Stamp Program funding. Audits should be made in accordance with generally accepted auditing standards including the standards published by the General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions for Federal grants. Such tests would include an appropriate sampling of Federal grants. Examinations will be conducted with reasonable frequency, usually annually, but not less frequently than every two years. The frequency of these examinations shall depend upon the scope and complexity of the activity audited. The examinations do not relieve USDA of its audit responsibilities, but may reduce the frequency and scope of such audits.

(10) Methods to resolve audit findings and recommendations and to follow-up on corrective or preventive actions.

(11) Effective Control and Management of Bonus Costs (Reserved).

(c) The standards in § 277.6(b) apply to subagencies or contractors involved with Food Stamp Program funding.

§ 277.7 Cash Depositories.

(a) The term "cash depositories" refers to banks or other institutions which maintain accounts where Food Stamp Program funds are deposited and from which withdrawals are made to meet administrative costs of the State agency.

(b) State agencies are encouraged to use minority owned banks to expand opportunities for minority enterprises.

(c) FNS shall not: (1) Require physical segregation in a cash depository of Program funds from other State agency funds.

(2) Establish any eligibility requirements for cash depositories in which Program funds are deposited by the State agency.

§ 277.8 Bonding and Insurance.

(a) *General.* In administering FNS program funds, State agencies shall observe their regular requirements and practices with respect to bonding and insurance. FNS will not impose additional bonding and insurance requirements, including fidelity bonding, above those normally required by the State agency.

(b) *Loan guarantees.* FNS makes no guarantee of any loan or payment of money borrowed by a State agency for administering the Food Stamp Program. State agencies shall not make any assurances to any lender or contractor

that FNS will furnish funds for loan payments.

§ 277.9 Administrative Costs Principles.

(a) This section prescribes specific policies and procedures governing State agencies for funding under this Part.

(b) Any cost related to determining the food stamp eligibility of AFDC cases, including the initial conversion of these cases during implementation of the Food Stamp Act of 1977, shall be included as part of the AFDC determination costs and claims. They are not allowable costs for FNS reimbursement.

(c) When costs for administering the program are claimed for reimbursement, the audit trail must identify the specific activities, locations, or time periods as defined in this section. (1) *Direct Cost.* Allowable direct costs may be charged to the Food Stamp Program at the 50 percent or higher funding level as specified in this Part.

(2) *Indirect Cost.* Allowable indirect costs may also be claimed at the 50 percent or higher reimbursement funding level as specified in this Part and Appendix A.

(3) Direct and indirect costs claimed for food stamp cost reimbursement must be incurred for the time periods, the activities or for the locations for which the rates are approved by FNS.

(d) All State agency Cost Allocation Plans for determining the costs of administering the program must be approved by the cognizant Federal agency. All Cost Allocation Plans involving food stamp funds shall be submitted to FNS for review.

§ 277.10 Program Income.

(a) Program income is gross income resulting from activities financed with Food Stamp Program funds. Such earnings exclude certain interest income but includes income from service fees, usage or rental fees, sale of assets purchased with Program funds, and royalties on patents and copyrights.

(b) Interest earned on advances of Food Stamp Program administrative funds shall be remitted to FNS except for interest earned on advances to States or instrumentalties of a State as provided by the Intergovernmental Cooperation Act of 1968 (P.L. 90-577) and advances to tribal organizations under the Indian Self-Determination Act (Sections 102-104).

(c) Income resulting from the sale of real and personal property whose acquisition cost was borne in whole or in part with Food Stamp Program funds shall be remitted to FNS or applied to the Federal share of current program costs in accordance with § 277.13. All other sales proceeds will be handled in accordance with § 277.13.

(d) Unless there is a prior agreement between FNS and the State agency, the State agency shall have no obligation to FNS with respect to royalties received from copyrights or patents produced as a result of activities financed with Food Stamp Program administrative funds.

(e) Any other income earned under activities supported by Food Stamp Program administrative funds may be retained by the State agency if they are deducted from the gross Food Stamp Program administrative costs for the purpose of determining net costs and FNS' share of net cost.

(f) State agencies shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of program fund transactions when such revenues are specifically earmarked for program fund projects in accordance with the terms and conditions of the Statewide cost allocation plan or the State's indirect cost rate proposal.

§ 277.11 Financial Reporting Requirements

(a) *General.* This section prescribes requirements for the State agencies to report financial information to FNS.

(b) *Authorized forms and instructions.* (1) Only forms specified by this Part, or other forms authorized by FNS, may be used for obtaining financial information from State agencies for the Food Stamp Program.

(2) All instructions for use in connection with the form specified in this Part shall be followed. FNS may prescribe supplementary instructions.

(3) State agencies shall submit the original and two copies of forms required by this section unless FNS approves a waiver of this requirement.

(4) The forms and instructions in this Part shall be available to the State agency and to the public upon request to FNS Regional Offices as set out in § 270.6(b).

(c) *Financial status report.* (1) *Form.* State agencies shall use the standard Financial Status Report (Form SF-269) to report Food Stamp Program costs.

(2) *Frequency.* The report (Form SF-269) shall be required quarterly.

(3) Those State agencies that receive payments under the U.S. Treasury check system shall submit to FNS a Quarterly Report of Federal Cash Transactions (Form SF-272).

(4) *Due Date.* Quarterly reports shall be due April 30 (for the period January-March), July 30 (April-June), October 30 (July-September), January 30 (October-December). Final reports are due December 30 for all completed Federal fiscal Years (October 1—September 30) or 90 days after termination of Federal financial support. Requests from State agencies for extension of reporting due dates may be approved if necessary.

§ 277.12 Retention and Custody of Records.

(a) *Retention period.* All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to Food Stamp Program funds shall be maintained for three years from the date of submission of the annual financial status report of the relevant fiscal year to which they apply except that:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the applicable records shall be retained until these have been resolved.

(2) In the case of a payment by a State agency to a subagency or contractor using Food Stamp funds, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the subagency or contractor which the State agency, USDA, or the Comptroller General of the United States or any of their duly authorized representatives, determine are pertinent to administration of the specific FNS program funds, for the purpose of making audit, examination, excerpts, and transcripts.

(b) *Restrictions on public access.* Unless required by law, FNS will not place restrictions on State agencies which limit public access to their records or the records of their subagencies or contractors that are pertinent to the grant, except when the State agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to FNS.

§ 277.13 Property.

(a) *General.* This section prescribes policies and procedures governing title, use, and disposition of real and personal property for which acquisition costs were borne, in whole or in part, as a direct charge to FNS funds, and ownership rights or intangible personal property developed, in whole or in part, with FNS funds. State agencies may follow their own property management policies and procedures, provided they observe the requirements of this section. With respect to property covered by this section, FNS may not impose on State agencies any requirement (including property reporting requirements) not

authorized by this section unless specifically required by Federal law.

(b) *Nonexpendable personal property.* (1) *Title.* Title to nonexpendable personal property whose acquisition cost is borne, in whole or in part, by FNS shall vest in the State agency upon acquisition, and shall be subject to the restrictions on use and disposition set forth in this section.

(2) *Use.* (i) The State agency shall use the property in the Program as long as there is a need for such property to accomplish the purpose of the Program.

(ii) When there is no longer a need for the property to accomplish the purpose of the Program, the State agency shall use the property where needed in administration of other programs in the following order of priority:

(A) Other federally funded programs of FNS.

(B) Other federally funded programs of USDA.

(C) Other federally funded programs.

(iii) When the State agency no longer has need for such property in any of its federally financed activities, the property may be used for the State agency's own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than $1,000, the State agency may use the property without reimbursement to FNS.

(B) For all such property not covered under paragraph (b)(2)(iii)(A) of this section, the State agency may retain the property for its own use, provided a fair compensation is made to FNS for the FNS share of the property. The amount of such compensation shall be computed by applying the percentage of FNS participation in the cost of the property to the current fair market value of the property.

(3) *Disposition.* If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than $1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of $1,000 or more per unit, the State agency shall request disposition instructions from FNS. FNS shall issue instructions to the State agency within 120 days following procedures shall govern:

(A) If the State agency is instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If the State agency is instructed to otherwise dispose of the property, the State agency shall be reimbursed by FNS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued within the 120-day period specified in paragraph (b)(3)(ii) of this section, the State agency shall sell the property and reimburse FNS with an amount which is computed by applying the percentage of FNS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FNS' share $100 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

(c) *Transfer of title to certain property.* (1) Where FNS determines that an item of nonexpendable personal property with an acquisition cost of $1,000 or more, FNS may reserve the right to require the State agency to transfer title to the property to the Federal Government or to a third party named by FNS.

(2) Such reservation shall be subject to the following: (i) The right to require transfer of title may be reserved only by means of an expressed special condition under which funds were authorized for acquisition of the property, or, if approval for the acquisition of the property is given after the funds are awarded, by means of a written stipulation at the time such approval is given.

(ii) The property must be sufficiently described to enable the State agency to determine exactly what property is involved.

(3) FNS may not exercise the right until the State agency no longer needs the property in the activity for which it was acquired. Such need shall be assumed to end with termination of the activity in which the property was used unless the State agency continues to use the property in other program-related activities after the termination date and demonstrates to FNS a continued need for such use in the program.

(4) To exercise the right, the Federal Government must issue disposition instructions to the State agency not later than 120 days after the State agency no longer needs the property in the activity for which it was acquired. If instructions are not issued within that time, FNS' right shall lapse, and the State agency shall act in accordance with the applicable standards in paragraph (b)(2) and (b)(3)(ii) of this section.

(5) The State agency shall be entitled to reimbursement with an amount which is computed by applying the percentages of the State agency's participation in the acquisition cost of the property to the current fair market value of the property, and for any reasonable shipping and interim storage costs it incurs pursuant to the Federal Government's disposition instructions.

(d) *Property management standards.* State agencies' property management standards for nonexpendable personal property covered by this section shall include the following procedural requirements: (1) Property records shall be maintained accurately and provide for:

(i) A description of the property.

(ii) Manufacturer's serial number or other identification number.

(iii) Acquisition date and cost.

(iv) Source of the property.

(v) Percentage of FNS funds used in the acquisition of the property.

(vi) Location, use and condition of the property.

(vii) Ultimate disposition data including sales price or the method used to determine current fair market value if the State agency reimburses FNS for its share.

(viii) Trade-in value of any property purchased with Federal funds where their trade-in value reduces the acquisition cost of new property.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage or theft to the property. Any loss, damage or theft of nonexpendable personal property shall be investigated and properly documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be implemented to keep the property in good condition.

(e) *Expendable personal property.* (1) *Title.* Title to expendable personal property, whose acquisition cost was borne in whole or in part by FNS, shall vest in the State agency.

(2) *Use.* The State agency shall use the property in the Program as long as there is a need for such property to accomplish the purpose of the Program.

(3) *Disposition.* When there is no longer a need for the property in the Food Stamp Program and there is a residual inventory exceeding $1,000 the State agency shall: (i) use the property in other Federally sponsored projects or programs,

(ii) retain the property for use on nonfederally sponsored activities, or

(iii) sell it.

(4) *Compensation.* FNS must be compensated for its share if the alternative in paragraph (e)(3)(i) above is not followed. The amount of compensation shall be computed in the same manner as for nonexpendable personal property.

(f) *Patents and inventions.* If any program activity produced patents, patent rights, processes or inventions in the course of work aided by FNS, such fact shall be promptly and fully reported to FNS. Unless there is prior agreement between the State agency and FNS on disposition of such items, FNS shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971), and Statement of Government Patent Policy as printed in 36 CFR 16889.

(g) *Copyrights.* When a program activity results in a book or other copyrightable material, the author or State agency is free to copyright the work, but FNS reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for government purposes. This includes copyrights on ADP software as specified in Appendix A.

§ 277.14 Procurement standards.

(a) *General.* This section provides standards for use by State agencies for the procurement of supplies, equipment, construction and other services whose cost is reimbursed in whole or in part by FNS. These standards ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive Orders. No additional procurement standards will be imposed by FNS upon State agencies unless specifically required by Federal laws or Executive Orders.

(1) State agencies may use their own procurement policies provided that procurements paid in whole or in part by FNS meet the standards set forth in this part.

(2) The standards contained in this part do not relieve the State agency of the contract responsibilities. The State agency is the responsible authority without recourse to FNS for the settlement and satisfaction of all contractual and administrative issues of procurements entered into in support of the program. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have jurisdiction.

(b) *Code of conduct.* The State agency shall maintain a standard of conduct which shall govern the performance of its officers, employees or agents in contracting with and expending FNS funds. The State agency's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from contractors or potential contractors. To the extent permissible under State or local law, rules or regulations, such standards shall provide for appropriate penalties, sanctions or other disciplinary actions to be applied for their violation either by the State agency's officers, employees or agents or by their contractors or agents.

(c) *Free competition.* Procurement(s) of the State agency, whether negotiated or advertised and without regard to cost, shall be conducted in a manner which provides maximum open and free competition. The State agency shall be alert to conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(d) *Procedural requirements.* The State agency procurement procedures must provide, as a minimum, the following:

(1) Proposed procurement(s) shall be reviewed by State officials to avoid purchasing unnecessary or duplicate items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the more economical and practical.

(2) Invitations for bids or requests for proposals shall contain a clear and accurate description of the technical requirements for the material, product, or service desired. Description(s) shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or features of a procurement. Any features of the "Brand Name" which must be met by offerors should be clearly specified.

(3) Positive efforts shall be made by the State agencies to use small and/or minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed with FNS funds.

(4) The type of procurement document used (i.e., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the purpose of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Formal advertising, with adequate purchase description, sealed bids and public openings are required for procurement(s) unless negotiation pursuant to paragraph (e) of this section is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be advertised unless required by State or local laws, rules or regulations.

(6) When formal advertising is used by the State agency:

(i) The awards shall be made to the bidder whose bid is responsive to the invitation and is most advantageous to the State agency, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.

(ii) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State agency.

(iii) Any or all bids may be rejected when it is in the State agency's interest to do so, and such rejections are in accordance with applicable State or local law, rules and regulations.

(e) *Negotiated procurements by State agencies.*

(1) Procurements may be negotiated by State agencies if it is not practicable or feasible to use formal advertising.

(2) Procurements may be negotiated if one or more of the following conditions prevail:

(i) The public exigency will not permit the delay incident to advertising.

(ii) The material or service to be procured is available from only one person or firm.

(iii) The contract is for personal or professional services rendered by a university, a college, or other educational institution.

(iv) No acceptable bids have been received after formal advertising.

(v) The purchase is for highly perishable materials, for materials or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, and for technical or specialized supplies requiring substantial initial investment for manufacture.

(vi) Negotiation is otherwise authorized by applicable Federal, State or local law, rules or regulations.

(3) Even if the cost or circumstances above justify negotiation in lieu of public advertising, competition will be required to the maximum extent practicable. All sole source negotiated procurements over $5,000 require prior FNS approval before FNS participation in funding.

(f) *Contractor responsibility.* Contracts shall be made by State agencies only with responsible contractors with the ability or potential to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility of other necessary resources.

(g) *Records for negotiated procurements by State agencies.* The procurement records or files of State agencies for negotiated purchases in amounts in excess of $10,000 shall include the following:

(1) Justification for the use of negotiation in lieu of advertising,

(2) Contractor selection, and

(3) Basis for the cost or price negotiated.

(h) *Contract Administration System.* The State agency is responsible for a system for contract administration to assure timely results and compliance with terms, conditions and specifications of the contract and receipt of all purchases or products.

(i) *Contract provisions.*

(1) *General.* The State agency shall establish procedures to define a sound and complete agreement in all contracts which it awards when the contract costs are to be borne as part of Food Stamp Program administrative funds.

(2) *Provisions.* (i) Contracts shall contain legal provisions or conditions which will allow for administrative, contractual, or other legal remedies and appropriate sanctions and penalties in instances where contractors violate or breach contract terms.

(ii) All contracts over $10,000 awarded by State agencies shall contain legal provisions for termination by the State agency and the manner by which it will be effected and the basis for settlement. In addition, such contracts shall set the conditions by which the contract may be terminated for default or because of circumstances beyond the control of the contractor.

(iii) All contracts shall include the bonding requirements of § 277.8.

(iv) All negotiated contracts above $10,000 shall include provisions for access to, and retention of, the contractor's records in accordance with § 277.12.

(3) *Compliance provisions.* (i) Provisions for compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as supplemented in Department of Labor regulations (41 CFR Part 60) shall be included in all contracts to which they are applicable.

(ii) All contracts and subcontracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-kick Back" Act (18 U.S.C. 874) as implemented in Department of Labor regulations (29 CFR Part 3). The State agency shall report all suspected or reported violations to FNS.

(iii) All construction contracts awarded by State agencies shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). The State agency shall report all suspected or reported violations to FNS.

(iv) All construction contracts exceeding $2,000 awarded by State agencies and all other contracts awarded by them which exceed $2,500 and which involve the employ of mechanics and laborers, shall include a provision for compliance with section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as implemented by Department of Labor regulations (29 CFR Part 5).

(v) All research or development contracts shall contain a notice to the effect that rights to inventions conceived or first actually reduced to practice in the course of or under the agreement shall be governed by "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971), and Statement of Government Patent Policy as printed in 37 FR 16889. The State agency shall assure that the performer of the research or development work either is given all necessary information regarding these matters, or is advised as to the source of such information. This subdivision shall also apply to nonresearch and nondevelopment contracts in fields of science or technology in which there has been little significant experience, outside of work funded by the Federal Government. (See also § 277.11(c).)

(vi) Contracts and subcontracts in excess of $100,000 shall contain a provision which requires the contractor to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857b. et sequ.). Suspected violations shall be reported by the State agency in writing to the Regional Office of the United States Environmental Protection Agency, with a copy to FNS.

§ 277.15 Food stamp investigations and prosecutions.

(a) *General.* This section establishes the standards and procedures for Federal funding of State and local costs of Food Stamp Program fraud investigations, prosecutions and fraud hearings.

(b) *Funding.* Upon submission to and approval by FNS of a budget revision and the information required by paragraph (c) below, State agencies will be funded at 75 percent of all allowable direct and indirect costs in accordance with the requirements contained in this section. This higher rate may apply retroactivity beginning October 1, 1978 and carry forward to the current period. In no case will 75 percent funding apply prior to October 1, 1978. In cases where an agency other than the State welfare agency is or will be involved, an information statement shall be submitted by each State agency to include this operation.

(c) *State agency descriptions.* Concurrent with the budget revision required in paragraph (d) below, the State agency shall submit the following information:

(1) Identification of the organizational units, with a brief description of each investigation or prosecution function assigned, that is claimed at the 75 percent rate;

(2) [Reserved]

(3) A copy of the statutes or court decisions under which food stamp fraud cases are prosecuted.

(4) A detailed description of the coordination between the investigative units, and the prosecuting units and the process by which prosecuting officials present indictments regarding food stamp fraud cases.

(5) Agreement that investigative reports, prepared by the investigation or prosecution units, and other related records will be made available to USDA upon request.

(d) *Budget revision.* The State agency shall prepare and submit a budget revision in compliance with §§ 272.2 and 277.2 to FNS for FNS approval.

(e) *Eligible Activity.* The following activities performed at the State or local level shall be eligible for funding at 75 percent of the costs if they are an integral element of food stamp investigations, prosecutions, and fraud hearings.

(1) Payroll, equipment, space and other support costs of qualified employees assigned specifically to the

investigation and the prosecution of civil and criminal offenses.

(2) Job related training costs for employees assigned to the above duties.

(3) Cost of fraud hearings.

(f) *Ineligible Activity.* The following activities, whether performed at the State or local level, shall be allowable at the 50 percent funding level but ineligible for funding at the 75 percent level.

(1) Administrative reviews, such as fair hearings as required per 7 CFR 273 or Performance Reporting System Reviews required per 7 CFR 275;

(2) Investigations of authorized retail or wholesale food concerns except when performed in coordination with USDA Office of Investigations or FNS or both;

(3) Audits;

(4) Verification of eligibility information provided by the household for the purpose of making an eligibility determination; and

(5) Establishing claims against households.

§ 277.16 Suspension, disallowance and program closeout.

(a) *Suspension.* When a State agency has materially failed to comply with the terms and conditions of this subchapter, FNS may, after written notification to the State agency, temporarily withhold some or all Federal reimbursements for costs of administration of the Food Stamp Program in accordance with § 276.4. Adjustments will be made either by adjusting the letter of credit authorization or by not allowing the State agency to withdraw funds.

(b) *Disallowance.* (1) FNS may disallow costs in accordance with § 276.4 and effect nonpayment for some or all costs incurred by a State agency which are normally allowable but are determined by FNS to be nonreimbursable because the State agency has failed to comply with any of the provisions contained in the Act, regulations, or FNS approved State Plan of Operation.

(2) FNS may also disallow costs and institute recovery of Federal funds when a State agency fails to adhere to the cost principles of this Part and Appendix "A".

(c) *Offsets to the Letter of Credit.*

(1) FNS may recover funds when owed by the State agency to FNS through offsets to the Letter of Credit. Offsets shall include:

(i) Costs determined by FNS to be disallowed under the provisions of this Part.

(ii) Unallowable costs resulting from audit or investigation findings.

(iii) Amounts owed which have been billed to the State agency and which the State agency has failed to pay without cause acceptable to FNS.

(2) The amounts recovered through the offset procedure should be in one lump sum. If recovery of funds through the offset procedure is not possible in one lump sum, FNS shall make appropriate adjustments to recover the funds in not more than three fiscal years.

(d) *Program transfer or termination.*

(1) When termination or transfer of a State Program has been agreed upon by FNS, the following closeout procedures shall be observed:

(i) Upon request, FNS shall make or arrange for prompt payment to the State agency for allowable costs not covered by previous payments.

(ii) The State agency shall immediately refund to FNS any unobligated balance of cash withdrawn by the State agency for the administration of the Program in the affected State or Indian reservation.

(iii) The State agency shall submit to FNS within 90 days after the date of termination of the Program, all required financial, performance and other reports. FNS may grant extensions when requested by the State agency.

(iv) FNS shall adjust the amount authorized by the Letter of Credit in order to effect payment of any amounts due the State agency, and if appropriate, shall bill the State agency for any amounts due to FNS. The amounts of such billings shall be promptly remitted to FNS.

(v) In the event a final audit has not been performed prior to the closeout of the Program, FNS shall retain the right to disallow costs or recovery funds resulting from the final audit findings.

(2) Provisions of § 277.13 apply for any property acquired with program funds or received from the Federal Government in connection with the program and which was in use in the affected project area or areas.

(e) *Retroactive adjustment.* In the event that FNS finds that a State agency has failed to comply substantially with the provisions of this subchapter, retroactive adjustments may be made to accomplish the purposes of suspension or disallowance.

Note.—The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified "significant." An Approved Draft Impact Analysis is available from Claire Lipsman, Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250.

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

Dated: November 5, 1979.

Carol Tucker Foreman,

Assistant Secretary.

Appendix A

Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State Agencies

This appendix sets forth the procedures implementing uniform requirements for the negotiations and approval of cost allocation plans with State agencies, in accordance with the provisions of Federal Management Circular 74-4 and OASC-10, "Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government," U.S. Department of Health, Education, and Welfare. This material is adapted substantially from the circular; changes have been made only when necessary in order to conform with legislative constraints.

A. Purpose and scope.—(1) Objectives. This Appendix sets forth principles for determining the allowable costs of administering the Food Stamp Program by State agency under FNS approved State Plans of Operation. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent or Federal and State or local participation in the financing of the Program. They are designed to provide that all federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

(2) Policy guides. The application of these principles is based on the fundamental premises that:

(a) State agencies are responsible for the efficient and effective administration of the Food Stamp Program through the application of sound management practices.

(b) The State agency assumes the responsibility for seeing that Food Stamp Program funds have been expended and accounted for consistent with underlying agreements and program objectives.

(c) Each State agency, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques as may be necessary to assure proper and efficient administration.

(3) Application. These principles will be applied by FNS in determining costs incurred by State agencies receiving FNS payments for administering the Food Stamp Program.

(B) Definitions. Approval or authorization by FNS means documentation evidencing consent prior to incurring specific costs.

Cognizant Federal Agency means the Federal agency recognized by OMB as having the predominate interest in terms of program dollars.

Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs of program administration together with the allocation methods used.

Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to FNS as a discharge of the State agency's accountability for FNS funds.

Cost center means a pool, summary account, objective or area established for the accumulation of costs. Such areas include objective organizational units, functions, objects or items of expense, as well as ultimate cost objective(s) including specific costs, products, projects, contracts, programs and other operations.

Federal agency means FNS and also any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

Payments for administrative costs means reimbursement or advances for costs to State agencies pursuant to any agreement whereby FNS provides funds to carry out programs, services, or activities in connection with administration of the Food Stamp Program. The principles and policies stated in this Appendix as applicable to program payments in general also apply to any State agency obligations under a cost reimbursement type of agreement performed by a subagency, including contracts and subcontracts.

Food Stamp Program administration means those activities and operations of the State agency which are necessary to carry out the purposes of the Food Stamp Act, including any portion of the Program financed by the State agency.

Local unit means any political subdivision of government below the State level.

Other agencies of the State means departments or agencies of the State or local unit which provide goods, facilities, and services to a State agency.

Subagencies means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the Food Stamp Program and which is accountable to the State agency for the use of the funds provided.

Services, as used herein, means goods and facilities, as well as services.

Supporting services means auxiliary functions necessary to sustain the direct effort of administering the Food Stamp Program. These services may be centralized in the State agency or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

(C) Basic guidelines.—(1) Factors affecting allowability of costs. To be allowable under the Food Stamp Program, costs must meet the following general criteria:

(a) Be necessary and reasonable for proper and efficient administration of the Program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

(b) Be authorized or not prohibited under State or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

(d) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the State agency is a part.

(e) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(f) Not be allocable to or included as a cost to any other federally financed program in either the current or a prior period.

(g) Be the net of all applicable credits.

(2) Allocable costs. (a) A cost allocable to a particular cost objective to the extent of benefits received by such objective.

(b) Any cost allocable to a particular program or cost objective under these principles may not be shifted to other Federal programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

(c) Where an allocation of joint cost will ultimately result in charges to the Program, an allocation plan will be required as prescribed in Section 1 of these principles.

(3) Applicable credits. (a) Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

(b) Applicable credits may also arise when Federal funds are received or are available from sources other than FNS to finance operations or capital items donated or financed by the Federal Government to fulfill matching requirements under another program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given program.

(D) Composition of cost.—(1) Total cost. The total cost of a program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

(2) Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to a program or other ultimate cost objective. However, it is essential that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under the Food Stamp Program are provided in the sections which follow.

(E) Direct costs.—(1) General. Direct costs are those that can be identified specificially with a particular cost objective. These costs may be charged directly to the Food Stamp Program, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to programs and other ultimate cost objectives.

(2) Application. Typical direct costs chargeable to the Food Stamp Program are:

(a) Compensation of employees for the time and effort devoted specifically to the administration of the Program.

(b) Cost of materials acquired, consumed, or expended specifically for the purpose of the Program.

(c) Equipment and other approved capital expenditures.

(d) Other items of expense incurred specificially for efficiently and effectively administering the Food Stamp Program.

(e) Services furnished specifically for the Program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

(F) Indirect costs.—(1) General. Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the result achieved. The term indirect cost as used herein applies to costs of this type originating in the State agency, as well as those incurred by other departments in supplying goods, services, and facilities, to the State agency. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a State agency or in other agencies providing services to a State agency. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

(2) State agency indirect costs. All State agency indirect costs, including the various levels of supervision, are eligible for allocation to the Program provided they meet the conditions set forth in their principles. In lieu of determining the actual amount of State agency indirect cost allocable to the Program, the following methods may be used:

(a) Predetermined fixed rates for indirect costs. A predetermined fixed rate for computing indirect costs applicable to program administration may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties to reach an informed judgment (1) as to the probable level of indirect costs in the State agency during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predeterminated rate would not exceed actual indirect costs.

(b) Negotiated lump sum for overhead. A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a State agency's indirect services cannot be readily determined as in the case of a small self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs

will be treated as an offset to total indirect expenses of the State agency before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

(3) Limitation on indirect costs. (a) Some Federal programs may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor programs of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such program does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under these principles, whichever is the smaller.

(b) When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under a program may not be shifted to another federally sponsored program or contract.

(G) Cost incurred by other agencies of the State.—(1) General. The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

(2) Alternative methods of determining indirect cost. In lieu of determining actual indirect cost related to a particular service furnished by other agencies of the State, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

(a) Standard indirect rate. An amount equal to ten percent of direct labor cost in providing the service performed by other agencies of the State (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

(b) Predetermined fixed rate. A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F(2)(a) of these principles.

(H) Cost incurred by State agency for others. The principles provided in section G will also be used in determining the cost of services provided by the State agency to another agency.

(I) Cost Allocation Plan.

(1) A cost allocation will be required to support the distribution of any indirect costs. All costs allocable to the Food Stamp Program under cost allocation plans will be supported by formal accounting records which will substantiate the propriety of eventual charges.

(2) There are two types of cost allocation plans:

(a) Statewide or central service cost allocation plan identifies and distributes the cost of services provided by support organizations to those departments or units participating in Federal programs.

(b) Indirect cost proposals distribute the administrative or joint costs incurred by the State agency and the cost of service allocable to it under the Statewide or central service cost allocation plan in a ratio to all work performed by the State agency. The process involves applying a percentage relationship of indirect cost to direct cost.

(3) Requirements. The cost allocation plan of the State agency shall cover all allocated costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the State agency, to the extent feasible, should be presented in a single document.

(4) Instructions for preparation of cost allocation plans. The Department of Health, Education, and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State agencies in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level and indirect cost proposals of individual State agencies.

(5) Submitting Plans for Approval. (a) Responsibility for approving cost allocation plans for individual State agencies has been assigned by the Office of Management and Budget to the cognizant Federal agency.

(b) State cost allocation plans must be submitted to the cognizant Federal agency within six months after the last day of the State's fiscal year. Upon request by the State agency, an extension of time for submittal of the cost allocation plan may be granted by the cognizant Federal agency. It is essential that cost allocation plans be submitted in a timely manner. Failure to submit the plans when required will cause the State agency to become delinquent. In the event a State becomes delinquent, FNS will not provide for the recovery of central service and indirect costs, and such costs already made and claimed against Food Stamp Program funds will be subject to disallowance.

(6) Negotiation and Approval of Cost Allocation Plans for States. The cognizant Federal agency, in collaboration with Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans.

(7) Negotiation and Approval of Cost Allocation Plans for Local Governments. Cost allocation plans will be retained at the local government level for audit by the cognizant Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

(8) A current list of cognizant Federal agencies is maintained by the Office of Management and Budget.

(9) Resolution of problems. The Office of Management and Budget will lend assistance in resolving problems encountered by Federal agencies on cost allocation plans.

(10) Approval by FNS. FNS reserves the right to disapprove costs not meeting the general criteria outlined in Section C of these principles. FNS shall promptly notify the State agency in writing of the disapproval, the reason for the disapproval and the effective date. Costs incurred by State agencies after disapproval may not be charged to FNS unless if FNS subsequently approves the cost.

Standards for selected items of cost

A. *Allowable cost.* Standards for allowability of costs are established by Federal Management Circular 74-4. These standards will apply regardless of whether a particular item of cost is treated as direct or indirect. Failure to mention a particular item of cost in these standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles as stated in Attachment A to Federal Management Circular 74-4.

(1) *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of the Food Stamp Program is allowable. This includes costs incurred by central service agencies of the State government for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

(2) *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the Program;

(b) Solicitation of bids for the procurement of goods and services required;

(c) Disposal of scrap or surplus materials acquired in the performance of the agreement; and

(d) Other purposes specifically provided for by FNS regulations or approved by FNS in the administration of the Food Stamp Program.

(3) *Advisory Councils.* Costs incurred by State advisory councils or committees established to carry out Food Stamp Program goals are allowable. The cost of like organizations is allowable when used to improve the efficiency and effectiveness of the Program.

(4) *Audit service.* The cost of audits necessary for the administration and management of functions related to the Program is allowable.

(5) *Bonding.* Costs of premiums on bonds covering employees who handle Food Stamp Program funds or food coupons are allowable. The amount of allowable coverage shall be limited to the anticipated maximum amount of food stamp funds or food coupons handled at one time by that employee.

(6) *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for

services of a central budget office are generally not allowable since these are costs of general government. however, where employees of the central budget office actively participate in the State agency's budget process, the costs of services identifiable to the Food Stamp Program are allowable.

(7) *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

(8) *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for the Food Stamp Program is allowable.

(9) *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

(10) *Compensation for personal services.* (a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance in the administration of the program including but not necessarily limited to wages, salaries, and supplementary compensation and benefits as defined in Section A (13) of these principles. The costs of such compensation are allowable to the extent that total compensation for individual employees: is reasonable for the services rendered; follows an appointment made in accordance with State or local government laws and rules and which meets Federal Merit System or other requirements, where applicable; and is determined and supported as provided in Section A of these principles. Compensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the Food Stamp Program activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating resonableness.

(b) *Payroll and distribution of time.* Amounts charged to the program for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Distribution of salaries and wages of employees chargeable to more than one program or other cost objective will be supported by appropriate time reports or approved time study methodologies. The method used should be included in the cost allocation plan and should be approved by FNS.

(11) *Depreciation and use allowance.* (a) State agencies may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

(b) The computation of depreciation or use allowances will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of acquisition of land or buildings. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by FNS.

(c) Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

(d) In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

(e) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(12) *Disbursing service.* The cost of disbursing program funds by the State Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

(13) *Employee fringe benefits.* Costs identified are allowable to the extent that total compensation for employees is reasonable as defined in paragraph (10)(a) of these principles.

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (a) provided pursuant to an approved leave system, and (b) the cost thereof is equitably allocated to all related activities, including federally-assisted programs.

(b) Employee benefits in the form of employers' contributions or expense for social security, employees' life and health insurance plans, unemployment insurance coverage, workers' compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to programs and to other activities.

(14) *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

(15) *Exhibits.* Costs of exhibits relating specifically to the Food Stamp Program are allowable.

(16) *Legal expenses.* The cost of legal expenses required in the administration of the Program is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

(17) *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

(18) *Materials and supplies.* The cost of materials and supplies necessary to carry out the program is allowable. Purchases made specifically for the program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the State agency. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

(19) *Memberships, subscriptions and professional activities.*

(a) The cost of membership in civic, business, technical and professional organizations is allowable, provided:

(i) The benefit from the membership is related to the program,

(ii) the expenditure is for agency membership,

(iii) the cost of the membership is reasonably related to the value of the services or benefits received, and

(iv) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

(b) *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the program.

(c) *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the Program and they are consistent with regular practices followed for other activities of the State agency.

(20) *Motor pools.* The costs of a service organization which provides automobiles to user State agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

(21) *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

(22) *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for the program are allowable.

(23) *Printing and reproduction.* Cost for printing and reproduction services necessary for program administration, including but not limited to forms, reports, manuals, and information literature, is allowable. Publication costs of reports or other media relating to program accomplishments or results are allowable.

(24) *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for the program is allowable.

(25) *Taxes.* In general, taxes or payments in lieu of taxes which the State agency is legally required to pay are allowable.

(26) *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits the program is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by FNS.

(27) *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

(28) *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to the program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two. The changes must be consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

B. *Costs allowable with approval of FNS.*

(1) *Automatic data processing.* The cost of data processing services for Food Stamp Program administration is allowable. This cost may include rental of equipment or depreciation on State agency owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of FNS as provided under the selected item for capital expenditures. The conditions for Food Stamp Program funding of the acquisition of Automatic Data Processing equipment and services are contained in these principles in accordance with OMB Circular No. A-90.

(2) *Definitions.*—(a) *"Acceptance documents"* means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

(b) *"Advance Planning Document" or "APD"* means a written plan of action to acquire the proposed APD services, system, or equipment. The APD must contain a statement of needs and objectives:

(i) the feasibility study;

(ii) a preliminary cost/benefit analysis including lease/purchase options;

(iii) a personnel resource statement indicating availability of qualified and adequate staff including a project director to accomplish the project objectives;

(iv) a detailed description of the nature and scope of the activities to be undertaken and the methods to be used;

(v) a proposed schedule;

(vi) a proposed budget; and

(vii) a statement indicating the period of time for which the services, system, or equipment described are expected to be used; for integrated computer systems, a statement of the percentage allocated to FNS and a breakdown or explanation of how the percentage was determined.

(c) *"Automatic Data Processing" or "ADP"* means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

(d) *"Automatic Data Processing equipment" or "ADP equipment"* means: (i) Electronic digital computers, regardless of size, capacity or price, that accept data input, store data, perform calculations and other processing steps, and prepare information.

(ii) All peripheral or auxiliary equipment used in support of electronic computers whether selected and acquired with the computer or separately;

(iii) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of ADP equipment which includes an electronic computer; and

(iv) "Data input equipment" means equipment used to enter data directly or indirectly into an electronic digital computer; peripheral or auxiliary equipment; or data transmission or communication equipment.

(e) *"Automatic Data Processing services" or "ADP services"* means: (i) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or

(ii) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation.

(f) *"Data processing"* means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording and transmitting.

(g) *"Feasibility study"* means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems can be made to warrant the substantial investment of staff, time, and money. The study shall project for a three year period the requirements for ADP equipment, services, and systems.

(h) *"Request for proposal" or "RFP"* means the document used for public solicitations of competitive proposals from qualified sources as outlined in 7 CFR 277.14.

(i) *"Service agreement"* means a document signed by the State or local agency and a second State or local organization providing ADP services to the State or local agency which: (i) Identifies those ADP services to be provided by the provider agency;

(ii) Includes, preferably as an amendable attachment, a schedule of changes for each identified ADP service, and a certification that these charges apply equally to all users;

(iii) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services changes;

(iv) Includes assurances that services provided shall be timely and satisfactory; and

(v) Requires the provider agency to obtain prior State agency approval and to follow competitive procurement procedures equivalent to those contained in 7 CFR 277.14 for the acquisition of any ADP services in support of or in addition to the service agreement.

(j) *"Software"* means a set of computer programs, procedures, and associated documentation by which ADP equipment is used and operated.

(k) *"System design"* means the putting together of a new or more efficient ADP system which avoids the deficiencies and discrepancies in the old system.

(l) *"System specifications"* means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data—which is required to determine the ADP equipment and software necessary to implement the system design.

(m) *"System study"* means the examination of existing information flow and operational procedures within an organization to determine how to provide more timely, accurate, and meaningful information for management decision-making and to develop new or improved ADP systems to service, control and coordinate the activities of the organization to improve operational efficiency. The study essentially consists of three basic phases: data gathering or investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting, of the parts and relationships uncovered through the analysis into an efficient system.

(3) *Obtaining approval.* Prior approval by FNS is required for costs of ADP equipment or ADP services in support of the Food Stamp

Program which exceed $25,000 in combined Federal and State funds per project. Requests for approvals must be forwarded through the State agency prior to submittal to FNS. Approval by FNS will be based on a review of the studies conducted by or for the agency that will justify the acquisition of the proposed ADP equipment or ADP services. Written approval of the Advance Planning Document must be obtained from FNS by the State agency prior to entering into contractual agreements or making any other commitment for acquisition of ADP equipment or ADP services.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents specified in this regulation prior to submittal for FNS approval. In addition, State agency approval is also required for those acquisitions of ADP equipment and ADP services not requiring prior approval by FNS.

(5) *Competitive procurement.* Acquisition of ADP equipment and purchase of ADP services shall be based on competitive procurement procedures specified in 7 CFR 277.14 when Food Stamp Program funds are involved. State agency officials responsible for such procurement will ensure that formal advertising is the method of procurement unless the conditions for negotiation in 7 CFR 277.14 are met. Not withstanding the existence of circumstances justifying negotiation, competitive procurement shall be obtained to the maximum extent practicable. The competitive procurement policy shall be applicable except for ADP services provided by the agency itself, or by other State or local agencies.

(6) *Submittal of documents.* (a) Prior to claiming funding under the Food Stamp Program the State agency will be required to submit:

(i) the advance planning document;

(ii) the service agreement (when data processing services are to be provided by a State central data processing facility or by another State or local agency);

(iii) the request for proposal, prior to its issuance when service or equipment proposals are being solicited from commercial sources; and

(iv) the contract, prior to signature of the contracting officer when services or equipment are to be acquired commercially.

(b) Voluntary submittal, or when requested by FNS, will be made of:

(i) the system study,

(ii) the system design,

(iii) the system specifications,

(iv) the acceptance document.

(7) *Methods for charging costs.* Methods and procedures for properly charging the costs of all systems whether acquired from public or private sources shall be in accordance with this regulation and applicable FNS instructions.

(8) *Access.* Access to the system by FNS in all of its aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State at intervals as are deemed necessary by FNS to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access by appropriate State and Federal representatives to all parts of the system shall result in termination of Food Stamp Program funds in the costs of the system and its operation.

(9) *Ownership rights.* (a) *Software.* The State will have all ownership rights in software or modification thereof and associated documentation designed, developed or installed with Food Stamp Program funds except that FNS reserves a royalty-free, non-exclusive license to reproduce, publish, or otherwise use, and to authorize others to do so, such software, modification and documentation. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions of this section.

(b) *Automatic data processing equipment.* The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which are covered in 7 CFR 277.13 are applicable to automatic data processing equipment.

(10) *Use of ADP systems.* ADP systems designed, developed or installed with Food Stamp Program funds shall be used for a period of time consistent with the Advance Planning Document as approved, or which FNS shall determine is sufficient to justify the Federal funds invested.

(11) *Basis for continued Federal financial participation.* Periodic onsite surveys and reviews of State and local agency ADP methods and practices may be conducted by or for FNS to determine the adequacy of such methods and practices and to assure that ADP equipment and services are utilized for the purposes for which Federal funds were authorized. Such surveys may include:

(a) *Pre-installation readiness.* A pre-installation survey including an on-site evaluation of the physical site and the State agency's readiness to use the proposed ADP services, equipment or system when installed and operational.

(b) *Post-installation.* A review conducted after installation of ADP equipment or systems to assure that the objectives for which Federal financial participation was approved are being accomplished.

(c) *Utilization.* A continuing review of ADP facilities to determine whether or not the ADP equipment or services are being efficiently and effectively utilized in support of the Food Stamp Program. Should FNS determine from such surveys or reviews or otherwise that the State agency has improperly used Food Stamp Program funds, termination of Food Stamp Program funding may be invoked. Such termination would be limited to the costs of the data processing services or equipment in question as specified in the written notification of termination by FNS.

(12) *Application of this Section.* The conditions of this Section apply for initial and continuing authority to claim Food Stamp Program funding for automatic data processing services and equipment. Due to the of the procurement of ADP equipment and services, approved cost allocation plans will not be valid unless documentation required under B(1) of this Section is submitted and approvals under B(1) of this Section are obtained.

(13) *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the Program is allowable subject to the following conditions.

(a) The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality.

(b) The cost of space may not be charged to FNS for periods of nonoccupancy, without authorization of FNS.

(i) *Rental Cost.* The rental cost of space in a privately-owned building is allowable.

(ii) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(iii) *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the program or those that materially increase the value or useful life of the facilities (Section B(3) of these principles) are allowable when specifically approved by FNS.

(iv) *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in paragraph A(11) of these principles.

(v) *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by FNS.

(14) *Capital expenditures.* The cost, net of any credits, of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets, and/or of nonexpendable personal property, having a useful life of more than one year and a net acquisition cost of more than $5,000 per unit after allocation to FNS as projected for one year after purchase, is allowable when such procurement is specifically approved by FNS. No such approval shall be granted unless the State agency shall demonstrate to FNS that such a cost is:

(a) necessary and reasonable for proper and efficient administration of the program, and allocable thereto under the principles provided herein, and

(b) that procurement of such item or items has been or will be made in accordance with the standards set out in § 277.14. In no case shall such a cost become a program charge against FNS prior to approval in writing by FNS of the procurement and the cost. When assets acquired with Food Stamp funds are (i) sold, (ii) no longer available for use in a Federally-sponsored program, or (iii) used for purposes not authorized by FNS. FNS's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

(15) *Insurance.* (a) Cost of insurance to secure the State agency against financial losses involved in the acceptance, storage,

and issuance of food coupons and ATP cards is allowable with FNS approval.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(i) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(ii) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal government property are unallowable except to the extent that FNS approves such cost.

(16) *Management Studies.* The cost of management studies to improve the effectiveness and efficiency of program management for the Food Stamp Program is allowable. However, FNS must approve cost in excess of $2,500 for studies performed by outside consultants or agencies other than the State agency.

(17) *Preagreement costs.* Costs incurred prior to the effective date of approval of the amended indirect cost proposal or the revised Statewide cost allocation plan, whether or not they would have been allowable thereunder if incurred after such date, are allowable only when subsequently provided for in the plan or approved indirect cost proposal.

(18) *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the State agency is allowable. Prior authorization must be obtained from FNS for costs exceeding a total of $2,500.

(19) *Proposal costs.* Costs of preparing indirect cost proposals or amendments for allocating, distributing, and implementing provisions for payment of portions of the costs of administering the Food Stamp Program by the State agency are allowable.

(20) *Cost incurred by Agencies other than the State.* The cost of services provided by other agencies (including municipal governments) may only include allowable direct costs plus a pro rata share of allowable supporting costs and supervision directly required in performing the service. Allowable supporting costs are those services which may be centralized and includes such functions as procurement, payroll, personnel services, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service and the like. Supervision costs will not include supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in the operation of the Program.

In lieu of determining actual indirect cost related to a particular service performed by another agency, either of the following alternative methods may be used during the fiscal year involved and is specifically provided for in the indirect cost proposal:

(a) Standard indirect rate equal to ten percent of direct labor cost in providing the service (excluding overtime, shift or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable cost.

(b) A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated.

C. *Unallowable costs.* The following costs shall not be allowable:

(1) Costs of determining Food Stamp eligibility incidental to the determination of AFDC eligibility are not chargeable to FNS.

(2) Bad debts. Any losses arising from uncollectable accounts or other claims, and related costs, are unallowable.

(3) Contingencies. Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

(4) Contributions and donations. Unallowable.

(5) Entertainment. Costs whose purchase is for amusement, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities are unallowable.

(6) Fines and penalties. Costs resulting from violations of or failure to comply with Federal, State and local laws and regulations are unallowable.

(7) Governor's expenses. The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs is allowable.

(8) Indemnification. The cost of indemnifying the State against liabilities to third parties and other losses not compensated by insurance is unallowable.

(9) Interest and other financial costs. Interest on borrowings, bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable.

(10) Legislative expenses. Salaries and other expenses of the State legislature or similar local governmental bodies are unallowable.

(11) Losses. Losses which could have been covered by permissible insurance are unallowable.

(12) Underrecovery of cost under agreements. Any excess of cost over Federal contribution under one agreement is unallowable under another agreement.

(13) The acquisition of land or buildings is an unallowable cost.

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Part V

Department of Health, Education, and Welfare

Food and Drug Administration

Sunlamp Products; Performance Standard

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Parts 1002 and 1040

[Docket No. 75N-0047]

Sunlamp Products; Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This rule establishes a performance standard for sunlamp products and ultraviolet lamps intended for use in these products. The standard is intended to reduce the possibility of sunlamp-related injury by reducing unnecessary exposure and overexposure to sunlamp radiation by: (1) Limiting shorter wavelength emissions that are necessary and pose unreasonable risk, (2) providing for more adequate label warnings and user instructions containing safety information, and (3) requiring special lamp bases, protective goggles, timers, and controls to help users limit the duration and amount of exposure. A sunlamp product would be subject to these requirements if it is an electronic product designed to use one or more ultraviolet lamps (bulbs) and is intended for irradiation of any part of the living human body by ultraviolet radiation within a specified range of wavelengths to induce skin tanning. Ultraviolet lamps subject to the standard are those which produce radiation within a prescribed range of wavelengths and are intended for use in sunlamp products.

EFFECTIVE DATE: May 7, 1980, for sunlamp products that are manufactured on or after this date.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 30, 1977 (42 FR 65189), the Food and Drug Administration (FDA) proposed to establish a radiation safety performance standard for sunlamp products due to a recognized need for a regulatory standard for such products to protect the public health and safety. Interested persons had until February 28, 1978, to file written comments on the proposal. Comments were received from at least 214 different sources: 169 individuals, 26 physicians and medical facilities, 11 medical associations and their chapters, 9 manufacturers, 4 governmental agencies, a manufacturer's association, an equipment rental association, a spa owner, a retail sales company, and an independent quality control laboratory. Also, there were four congressional inquiries.

A summary of the comments and the agency response are as follows:

1. Several comments expressed the idea that the safety performance standard is needless, ineffective, costly, and an unwarranted government intrusion. Others maintained that: (1) Most sunlamp products already come with adequate warnings, (2) the public is already aware of ultraviolet radiation hazards, and (3) only those who are careless are injured by sunlamp products.

That there is a radiation problem with sunlamps is shown by the large number of sunlamps-related skin and eye injuries treated annually in hospital emergency rooms. This number does not include injuries treated outside the hospital or any long-term effects, such as skin cancer. FDA has considered the increased costs that a performance standard may impose on manufacturers and, therefore, on consumers of sunlamp products, and is convinced that the costs are out-weighed by the increased safety that will result from the standard. (See the economic impact assessment that accompanied the proposed regulation.) Furthermore, changes introduced in the final rule will reduce the cost of complying with the standard.

The standard for sunlamp products is being established to protect the consumer from acute burns (as evidenced by erythema) and exposure to unnecessary, hazardous radiation (in this case, ultraviolet C), and to warn the consumer of the adverse effects to the body after exposure to ultraviolet radiation. A consumer can take appropriate action: (1) When informed of the possible adverse effects to the body of exposure to ultraviolet radiation, and (2) when the product is provided with necessary safety performance features. The safety information and performance features on the product may be ineffective when a person is careless. However, the agency believes sunlamps perform a function desired by the consumer and, consequently, has not penalized the prudent individual by removing this potentially hazardous product from the marketplace.

2. Several comments objected to the standard's proposed early effective date of only 30 days after the date of publication of the final rule. Some objections were based upon the technical problems associated with the redesign of products; others were based on the technical, logistic, and personnel problems of manufacturing sunlamp products that would comply with the standard. Also, a manufacturer claimed that, because its sunlamp product now conforms to the provisions of the proposed rule, the urgency for the early effective date has been eliminated.

The agency agrees with the intent of these comments and defers the effective date of the standard to 180 days after the date of publication of the final rule. The effective date has not been deferred to more than 180 days after the date of publication because many companies have already redesigned many aspects of their products to meet the standard and because the high injury rate continues.

3. A comment stated that there are millions of existing sunlamps now in use that require medium screw base replacement bulbs. Those manufacturers who are marketing Underwriter Laboratories, Inc., listed products have already changed (since 1975) to designs requiring other than medium screw bases. For the older devices, however, an immediate cut-off of replacement lamps would seem an unfair economic burden to the owners. A reasonable approach would be to defer the effective date of this portion of the standard for 12 to 18 months.

The agency notes that products manufactured before the effective date of an applicable regulation would not be subject to that regulation. Replacement lamps for old products can be manufactured until the effective date of the standard and may be sold thereafter until the supply is exhausted. Further, the effective date of the standard is being deferred to 180 days after publication of the final rule.

4. One comment concerned the length of time a sunlamp must comply with the performance standard. The comment stated that experience confirms that timers and other parts of the sunlamp may fail prematurely because of faulty design, and, therefore, manufacturers should provide FDA with reasonable assurances of the reliability of the timers and other components used in their products.

The agency notes that the manufacturer of a radiation emitting electronic product subject to a performance standard is required to certify to the purchaser that the specific product being purchased complies throughout the useful life of the product with the applicable requirements of the standard in effect at the date of manufacture. The manufacturer must also develop a suitable quality control

program and assure the FDA of compliance through reports describing the product and the quality control program. In addition, the agency has a program of inspecting the manufacturing facilities for regulated products.

5. One comment objected to the introduction of the language, "or otherwise affect the function of the body," and the specific exclusion of prescription ultraviolet products from the proposed definition of "sunlamp product." The comment argued that this changes the standard substantially from one only for sunlamps used for skin tanning. Furthermore, the comment objected to the classification, or at least implication of classification, of sunlamp products as medical devices, and it objected to applying Part 801 (21 CFR Part 801) to such products until they have been properly classified in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c), added by the Medical Device Amendments of 1976 (Pub. L. 94-295).

The agency accepts a portion of this comment because the standard was developed specifically for sunlamps used in skin tanning and may not be appropriate for ultraviolet devices intended for other applications, e.g., cabinets used exclusively for psoriasis treatment. Therefore, the definition of "sunlamp product" in § 1040.20(b)(9) is revised to delete the language "or otherwise affect the structure or any function of the body" and the reference to Part 801. The agency believes sunlamp products are medical devices because the various therapeutic uses for sunlamp products, including treatment of fungal diseases, vitamin D production, treatment of psoriasis, and treatment of acne, cannot be readily separated from the tanning function insofar as assurance of intended use and danger from overexposure are concerned. Thus, the references to Part 801 in § 1040.20(b)(1) and (d) are retained.

The agency notes that the last sentence in proposed § 1040.20(b)(9) identifying uses not covered by the definition of "sunlamp product" is not needed to clarify the definition and, therefore, also deletes it in this final rule.

6. Several comments questioned the appropriateness of applying the standard to the sunlamp facilities installed in gyms, health clubs (spas), and other similar commercial establishments, where conditions of operation vary widely. For example, the comments alleged that timers are unnecessary when trained attendants are present or ineffective when more than one person is using the sunlamp facility at the same time. One comment recommended that commercial facilities be encouraged to hire attendants rather than rely on timers or customers to follow posted instructions. One national health club stated that virtually none of its sunrooms conforms to the proposed standard and that extensive and expensive modifications would be necessary to bring these facilities up to the standard. The comment explained further that, in most cases, there are no timers, no devices to interrupt manually the sunlamp operation, no user instructions, and no protective eyewear. Furthermore, the comment stated, the club is considering removing the sunlamp facilities from use until it is sure the facilities are safe to prevent any liability through noncomplying equipment.

The agency believes that, in the interest of the public health, the standard should apply to any sunlamp product meeting the definition of § 1040.20(b)(9), including those in use in commercial facilities. The agency has, however, considered the various requirements of the final rule as applied to these suntanning facilities, and to sunlamp products generally, and has concluded that the timer requirements of § 1040.20(c)(2) may be inappropriate in some circumstances. Upon application by the manufacturer, other means for providing radiation safety or protection may be approved in accordance with procedures in § 1010.4 for granting variances.

FDA advises that only sunlamp products, including commercial suntanning facilities, manufactured after the effective date of the final rule will be subject to the standard. Thus, owners of existing commercial suntanning facilities need not modify their facilities to comply with the standard, although they are encouraged to do so. Also, because in response to another comment the agency has concluded that fluorescent ultraviolet lamps may continue to be designed to fit the medium bipin lampholder, no retrofit programs by the commercial suntanning facilities will be necessary to accommodate the available replacement lamps (see comment 14). Some changes in procedures may be needed to ensure the availability of eyewear and the availability of information about the hazards associated with exposure of the body to ultraviolet radiation. These changes will make the facilities safer but not completely safe, because there may be no safe threshold level for exposure to ultraviolet radiation.

7. Some comments objected to the irradiance ratio of 0.001 in § 1040.20(c)(1). One objection was on the ground that the manufacturer had attempted and failed to design an efficacious bare quartz lamp that would meet this requirement. Another manufacturer claimed that the ultraviolet radiation in the wavelength range of 200 through 260 nanometers (nm) is less hazardous than the radiation in the wavelength range of 260 through 320 nm. It was stated that, because the latter is allowed, the former need not be restricted too much, and an irradiance ratio of 0.02 should be adopted.

The agency declines to raise the irradiance ratio on the basis presented in these comments. The radiation in the wavelength range of 200 through 260 nm is known to be hazardous and is not necessary for skin tanning. Available data on terrestrial solar irradiances indicate that radiation of that wavelength range emitted by the sun does not reach the earth. The relative safety of the ultraviolet radiation of the wavelength range from 200 through 260 nm and the ultraviolet radiation of the wavelength range from 260 through 320 nm is not the issue. The fact is that ultraviolet radiation in the shorter wavelength range is both hazardous and unnecessary for skin tanning, and, therefore, exposure to it should be reduced.

8. A comment recommended the adoption of 0.003 as the irradiance ratio in § 1040.20(c)(1) to take into account product variability and uncertainties in irradiance measurements for quality control in the manufacturing environment.

FDA agrees. Achievement of an exact ratio of 0.001 is not easy. Product variability and uncertainties of measurement of irradiance ratios render achievement of the 0.001 irradiance ratio difficult. Because many presently available sunlamps are close to the 0.001 irradiance ratio but not exactly at it, they would require substantial redesigning to lower their levels of ultraviolet radiation of wavelengths less than 260 nm. Achievement of a 0.003 irradiance ratio, however, is much easier for all concerned.

Also, the agency believes that the increase in the irradiance ratio will not compromise the protection afforded the public (1) because lamps that have little filtration for the ineffective ultraviolet radiation wavelenghts less than 260 nm will still be prohibited; (2) because uncertainties in determining compliance will cause manufacturers to produce a product with a target irradiance substantially below 0.003; and (3)

because the level of ultraviolet radiation of wavelengths less than 260 nm will be increased at most only 2 parts in 1,000 of the total ultraviolet emission. Furthermore, the cost of many sunlamps on the market will not be increased as a result of a necessary product redesign to meet the new irradiance ratio limit. For these reasons, the irradiance ratio is increased to 0.003.

9. A comment suggested that the irradiance ratio be abolished because it does not accomplish the desired effect of limiting the integrated irradiance at shorter wavelengths to less than 0.1 milijoule per square centimeter (mJ/cm^2) or any other value that might be considered appropriate. The comment stated that, because the bioeffects literature shows that "0.1 mJ/cm^2 at 254 nm may have deleterious effects," the regulation should simply limit the permitted total integrated irradiance for all wavelengths less than 260 nm to less than 0.1 mJ/cm^2 within the maximum timer interval possible for each sunlamp product. This eliminates specifying a maximum timer interval. The requirement of a timer that has a specified accuracy would still be relevant while the suggested change would permit the manufacturer to choose the rate at which its product achieves the desired tanning and should give the consumer a reasonable choice of products.

The agency agrees with the bioeffects literature; however, it rejects the conclusion because an upper limit to the integrated irradiance for the short wavelength ultraviolet only would require that each sunlamp product model have different ultraviolet radiation filtration and timer characteristics, depending upon the lamp brightness and distance of the user from the product. The irradiance ratio in § 1040.20(c)(1) would avoid these problems, provide greater design flexibility to manufacturers, and reduce the short wavelength range ultraviolet emissions. The irradiance ratio limit is intended only to limit unnecessary, hazardous radiation and is not to be understood as a biologically "safe" limit. A manufacturer is free to choose the rate at which the product achieves the desired tanning regardless of whether a specific irradiance limit for the ultraviolet radiation of wavelengths less than 260 nm or an irradiance ratio is chosen.

10. Several comments questioned how the 10-minute maximum timer interval was established and claimed that 10 minutes may be too much in some cases and too little in others. They stated that the warmup time should be defined as the time taken to reach a certain irradiance level and that the maximum timer interval should be increased by the warmup time. Also, they stated that the minus tolerance on timer accuracy was not needed and should not be required. Another comment was concerned that, because sunlamp manufacturers usually recommend a set of exposure distances and corresponding exposure times, the agency might regard the recommended exposure time for the shortest distance as the maximum timer interval.

The agency advises that the preamble to the December 1977 proposal discussed at length the basis on which the upper time limit was established. The purpose of having a maximum interval for the timer is to reduce the chance of severe erythema whereby medical attention is necessary. A 10-minute maximum timer interval was selected as one that would provide adequate protection and effectiveness when used with currently available sunlamps. This timer interval is consistent with the Underwriters Laboratory Standard (UL-482), and it also takes into account the lamp warmup time. The concept of graded timer interval was considered earlier, but it was not adopted because it would be more complex and, therefore, more difficult to implement.

The agency believes that both negative and positive error limits for the maximum timer interval are necessary for scale accuracy to deliver a desired exposure to the user. The consumer must have confidence in the timer scale for all time intervals less than 10 minutes. Also, the agency believes that the maximum timer interval should correspond to the maximum exposure time recommended by the manufacturer or to 10 minutes, whichever is less. Therefore, § 1040.20(c)(2)(ii) is issued as proposed.

11. One comment stated that the requirement for an extra manual control (switch) to activate the lamp (§ 1040.20(c)(4)) is unnecessary because, unless the timer resets itself automatically, the cumulative exposure time could not exceed 10 minutes.

The agency considers manual control for the resumption of radiation emission to be a necessary safety feature because better user control of exposure time is provided. The means that the manufacturer may use for implementing this performance criterion are not established by the requirement, and a separate switch per se for resumption of radiation is not required. The control features in § 1040.20(c) (2), (3), and (4) may all be built into the timer. Alternatively, the manufacturer may use any other configuration of timer and switches to meet these requirements. Section 1040.20(c)(4) is clarified to include explicitly the applicability of the requirement to timers.

12. The preamble to the December 1977 proposal encouraged comments concerning the transmission of visible radiation through protective eyewear. Several comments stated that the protective eyewear required in proposed § 1040.20(c)(5) should transmit enough visible light to enable the user to read the labels, set the timer, and perform other critical functions. Other comments stated that 2 percent transmission of visible light, as proposed in § 1040.20(c)(5)(ii), was too low a value for adequate vision. Also, several comments suggested that the language of the Underwriters Laboratory Standard (UL-482) paragraph 14.3, be used. This states: "The goggle lenses shall allow sufficient transmission of visible light emitted from the sunlamp to enable the user to see clearly enough to reset the timer in a darkened room."

The agency agrees that the protective eyewear should transmit enough visible radiation to allow the user of the product to see to perform critical functions in a darkened room. The proposed specific upper limit of 0.02 for spectral transmittance of the protective eyewear for radiation of wavelengths greater than 360 nm is arbitrary. Therefore, § 1040.20(c)(5)(ii) is changed to be consistent with the Underwriters Laboratories requirement for transmission of visible radiation through the protective eyewear. However, as a guide, the protective eyewear should not transmit hazardous levels of visible radiation when the wearer looks directly toward the lamp from the minimum use distance.

13. One comment objected to the requirement that multiple sets of protective eyewear be supplied if the manufacturer recommends that a sunlamp be used by more than one person at a time (§ 1040.20(c)(5)(i)), because extra sets of eyewear are offered for sale if the customer believes they will be needed. The comment asserted that the effect of the requirement will be increased consumer prices with no corresponding benefit because many users already have protective eyewear.

The agency regards the requirement of § 1040.20(c)(5)(i) as useful and consistent with the agency's desire to provide to the users the performance features they need to reduce the radiation hazard from sunlamps. This is especially true when the manufacturer recommends that the product be used by more than one person at a time. Further,

a would-be purchaser of a sunlamp product would not necessarily have protective eyewear. The comment is rejected.

14. There were many strongly worded objections to the proposal from dermatologists and from people afflicted with psoriasis. Their objections were directed primarily to proposed § 1040.20(c)(6)(iii), which would have prohibited any lamps subject to the standard from fitting a "medium bipin" lampholder described in the national consensus standard issued by the American National Standards Institute (ANSI C81.20-1976). The comments claimed that, if the proposed rule were promulgated, the leading manufacturer of fluorescent sunlamps (which fit the medium bipin lampholder) might cease producing them, and the result would be great hardship for many who use fluorescent sunlamps for the treatment of dermatological disorders such as psoriasis.

The agency is sympathetic to these comments and does not desire to have the fluorescent sunlamp removed from the market. Nor was that the intent of the proposal. The rule applies to sunlamps used for tanning; it is not intended to apply to fluorescent sunlamps used for medical treatment of dermatological disorders or for industrial or agricultural uses. Proposed § 1040.20(c)(6) is intended to prevent use of tanning sunlamps in lampholders used for general illumination that are commonly accessible to users at home and other places. Thus, it would ensure that sunlamps are used only in fixtures with appropriate timers, controls, and warning labels.

Revised sales and marketing information supplied by the leading manufacturer of fluorescent sunlamps in its comments on the proposal indicates that the annual sales volume of fluorescent sunlamps is about 31,000 units, of which 1 percent are used for skin-tanning purposes and 1 percent for medical prescription purposes in the home; 68 percent are used in health clubs, gymnasiums, etc.; and 30 percent are used in hospitals, in medical practice, and for industrial and agricultural purposes. Therefore, the proposed § 1040.20(c)(6)(iii) would have only a small effect upon the safety performance of sunlamp products used in the home, but would impose excessive retrofitting costs upon existing commercial suntanning, medical, industrial and agricultural facilities when the sales distribution of fluorescent sunlamps is considered. The agency has concluded that the benefit of the proposed provision does not offset the disadvantages. Thus, the requirement that an ultraviolet lamp may not be capable of insertion and operation in the medium bipin lampholder is deleted from the final order.

15. Several comments objected to the quantity and the repetitiveness of the information required by §§ 1010.2, 1010.3, 1040.20 (d) and (f), and Part 801 for the ultraviolet lamp, sunlamp product, and user instructions. Some comments noted that ultraviolet lamps are of special concern because it may be impossible to put all of the required information on the lamps. Others noted that the printing on a lamp is nearly invisible when the lamp is operating. One manufacturer suggested that labeling requirements for ultraviolet lamps be deleted entirely and that appropriate warnings in accompanying instructions be suggested in the preamble of the final regulation. Other manufacturers suggested simplified warning statements for the products. One comment stated that mere repetition of any required warning statements would generally be ineffective.

The agency believes that users of a sunlamp product and ultraviolet lamps should have the information necessary to make informed decisions regarding the risks of using the product. This principle requires appropriate product labeling and instructions for use.

The agency believes, however, that the amount of information originally proposed to be on the ultraviolet lamp can be reduced and the mode of display simplified without compromising public health and safety. The requirement of a label for certification and a label for the name and address of the manufacturer (21 CFR 1010.2 and 1010.3) can be satisfied by having tags or labels containing the information permanently affixed on the packaging for each lamp, if the name of the manufacturer and date of the manufacture are on the lamp for purposes of identification. The name of the manufacturer and the date of manufacture appearing on the lamp may be shortened by use of a code or symbols if the manufacturer has supplied the Director, Bureau of Radiological Health, with the key to the code or symbols and the location of the information on the lamp. Thus, the introductory text of § 1040.20(d) is changed and a new § 1040.20(d)(3) is added to incorporate these less restrictive concepts.

The agency also believes that the information required by the final rule to be on the sunlamp product is the minimum needed for the user to make informed decisions concerning the risks and proper use of the lamp in the absence of user instructions. User instructions can be more extensive and more detailed, at the option of the manufacturer. There is no certainty that the user instructions provided under § 1040.20(f) will always be with the product. Also, the publication of suggestions for the content of users' instructions in the preamble of the final rule is not appropriate. After publication, the preamble is not retained as part of the regulation in the Code of Federal Regulations (CFR). The information required by § 1040.20(d)(1) is not redundant to that required to be on the ultraviolet lamp (§ 1040.20(d)(2)). Thus, the comments objecting to the sunlamp product label requirements are rejected.

16. Several comments on § 1040.20(d)(1)(i) stated that all skin cancer tests have been performed with broad spectral sources and that the erythemal wavelengths alone are responsible for skin cancer. The comments stated that the fluorescent sunlamp has a relatively narrow spectral distribution, and there is no evidence that skin cancer has been caused by a fluorescent sunlamp. The comments expressed concern that reference to skin cancer could lead to unjustified litigation that would place the responsibility for any skin cancer on a sunlamp product and not on the other causes that cannot be identified.

The agency rejects the comment. The wavelength range of the radiation emitted by a fluorescent sunlamp is included in the wavelength ranges that are known to be associated with the induction of skin cancer. Radiation of erythemal wavelengths is also present in solar radiation, which is known to be associated with the appearance of skin cancer although the detailed action spectrum for cancer production in the ultraviolet region of the spectrum is not known. The inference that cancers are induced only in the presence of ultraviolet radiation of broad spectral distribution and not by radiation in the narrower erythemal spectrum has not been demonstrated. Therefore, this reference to skin cancer is justified, and the required warning is retained in this final rule.

17. Several comments on proposed § 1040.20 (d) and (f) concerned the harshness of required labels and instructions and asserted that no skin cancer has ever been observed in humans that could be attributed to the use of sunlamps, while agreeing that exposure of the skin to natural sunlight over many years can cause skin cancer. The comments expressed particular

difficulty in understanding why FDA is insisting on the reference to cancer when it has not seen fit to impose any reference to cancer in labeling of cigarettes. One manufacturer suggested that, if caution labels and instructions along these lines are needed, then the concept of repeated overexposure should be added because there is no link to the harmful effects from just "exposure" to sunlamp radiation. Another manufacturer urged that the similarity of sunlamp radiation to that of the sun be emphasized. Alternative wording of some of the warning statements was suggested. Another comment stated that the wording in § 1040.20(f) (1) and (2) and the repetition of the warning, as required, will unfairly alarm people and will deter the use of sunlamps.

The agency notes that sunlamps can produce erythema and that radiation of erythemal wavelength is present in solar radiation, which is known to be associated with the appearance of skin cancer. Warning labels and instructions for sunlamp products are necessary when the hazards of exposure to ultraviolet radiation are considered. Also, the label required by § 1040.20(d)(1)(i) warns the user of the similarity between sunlamp radiation and solar radiation. The overexposure to ultraviolet radiation in a single incident leads to acute effects such as skin burn and eye irritation (photokeratitis). Repeated exposure (chronic) may lead to premature skin aging and cancer. The warning labeling and instructions are believed to be sufficient. The agency also believes that the wording of the labels is accurate and understandable, so that the majority of the readers will comprehend the significance of the warnings. Finally, the agency advises that the health aspects of cigarettes and the appropriate warning labeling are not the subject of this particular agency action. The comments do not justify a change in the regulation and are rejected.

18. A comment stated that phrases such as "minimum use distance" and "recommended maximum exposure time" are ambiguous because exposure sequence, skin sensitivity, and customer use vary considerably. In contrast, flexibility in the writing of instructions would result in greater customer awareness of any recommended precautions. The comment urged that § 1040.20(d)(1) be revised to eliminate the discussed phrases.

The agency notes that both "minimum use distance" and "maximum exposure time" are defined in § 1040.20(b) and are values recommended by the manufacturer of each sunlamp product. A recommended value for "minimum use distance" and "maximum exposure time" is useful, for example, for the person being exposed for the first time after a long interlude or for the sensitive person but should not be relied upon by persons suffering from diseases such as xeroderma pigmentosum, erythropoietic porphyria, or lupus erythematosis. The "minimum use distance" and "maximum exposure time" are required to be specified by the manufacturer, who must determine the most appropriate values for the product. Supplemental information can be provided if the manufacturer believes the required information to be inadequate for the product. The agency is amending § 1040.20 (b)(5) and (d)(1) to make clear and to emphasize that recommended values of "minimum use distance" and "maximum exposure time" must be provided.

19. A comment stated that the labeling required in § 1040.20, while required to be permanently affixed, is not clearly required to be legible throughout the product's useful life. A paper or plastic label may deteriorate from heat and remain permanently affixed but not be legible. Another comment suggested that any label warning should be in contrasting color to draw attention to it. The comment noted that colors for labels were not specified in § 1040.20(d), although reproductions of the labels in the instructions are explicitly "color optional."

Products subject to the performance standards promulgated under the authority of the Radiation Control for Health and Safety Act of 1968 must comply with the standards during their entire useful life. The labels required for the sunlamp product must be legible and permanently affixed. Hue, intensity, contrast, and size of the wording on a label with the background are part of the legibility concept. Reproductions in user instructions of the required labels are permitted to be in colors chosen by the manufacturer because, if the reproductions were required to be the same color as on the product, the cost of the user information brochure could be increased needlessly. The agency has clarified § 1040.20(d) regarding label specifications.

20. Several comments objected to the complexity of the summary listing of deleterious effects required by § 1040.20(f) on the ground that manufacturers should not be expected to maintain current knowledge of every possible deleterious effect from ultraviolet radiation.

The agency believes that the manufacturer of a product has an obligation to inform the user, as well as the purchaser, of the known deleterious effects associated with the product. The proposed standard contained a current list of selected known deleterious effects in § 1040.20(f) (1)(iii) and (2)(iii). However, the agency believes the simplified statements included in the warning required by § 1040.20 (d)(1)(i), (f) (1)(ii) and (2)(ii) are adequate and will be more effective; thus, § 1040.20(f) (1)(iii) and (2)(iii) are deleted.

21. One comment suggested that all ultraviolet lamps, regardless of their purpose, carry the instructions specified in § 1040.20(f)(2). This would reduce the probability that ultraviolet lamps outside the definition of § 1040.20(b)(11) might be used for tanning and would eliminate the need for a new lampholder design, permitting the present standardization of lampholder designs to be continued. Another comment suggested that a technical brochure providing complete application and safety information should be made available and packed with each six-lamp container.

The agency rejects these comments. The first suggested action is too broad; thus, the warning would be placed on lamps used in situations where no hazard to humans is posed. The purpose of the base requirement of § 1040.20(c)(6) is to force the use of ultraviolet lamps in lampholders that comply with the other requirements of the standard. Regarding the second suggestion, safety information packed with each six-lamp container would probably not be available to the user because most users in the home buy only one lamp at a time.

Manufacturers of all sunlamp products and ultraviolet lamps intended for use in sunlamp products are currently subject to the records and reports requirements under § 1002.61(a)(4). On the effective date of this final rule, those intended for skin tanning will be included automatically in § 1002.61(c)(1), which concerns products subject to standards prescribed under 21 CFR Chapter I, Subchapter J. To conform the regulations concerning records and reports, § 1002.61(a)(4) is amended to delete any reference to sunlamps and ultraviolet lamps intended to induce skin tanning.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (secs. 358 and 360a, 82 Stat. 1177–1179, 1182 (42 U.S.C. 263f and 263i)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I, Subchapter J of Title 21 of the Code of Federal Regulations is amended as follows:

1. In Part 1002 by revising § 1002.61(a)(4) to read as follows:

§ 1002.61 List of specific product groups.

(a) * * *

(4) Ultraviolet lamps and products containing such lamps intended for irradiation of any part of the living human body by light of wavelength in air less than 320 nanometers to perform a diagnostic or therapeutic function.

* * * * *

2. In Part 1040 by adding new § 1040.20 to read as follows:

§ 1040.20 Sunlamp products and ultraviolet lamps intended for use in sunlamp products.

(a) *Applicability.* The provisions of this section are applicable as specified herein to the following products manufactured on or after May 7, 1980.

(1) Any sunlamp product.

(2) Any ultraviolet lamp intended for use in any sunlamp product.

(b) *Definitions.* As used in this section the following definitions apply:

(1) "Intended" means the same as "intended uses" in § 801.4 of this chapter.

(2) "Irradiance" means the radiant power incident on a surface divided by the area of the surface, as the area becomes vanishingly small, expressed in units of watts per square centimeter (W/cm^2).

(3) "Maximum exposure time" means the greatest continuous exposure time interval recommended by the manufacturer of the product.

(4) "Maximum timer interval" means the greatest time interval setting on the timer of a product.

(5) "Minimum use distance" means the least distance from the ultraviolet lamp at which the user should be exposed to radiation from the product, as recommended by the manufacturer.

(6) "Protective eyewear" means any device designed to be worn by users of a product to reduce exposure of the eyes to radiation emitted by the product.

(7) "Spectral irradiance" means the irradiance resulting from radiation within a wavelength range divided by the wavelength range as the range becomes vanishingly small, expressed in units of watts per square centimeter per nanometer ($W/(cm^2)$ (nm)).

(8) "Spectral transmittance" means the spectral irradiance transmitted through protective eyewear divided by the spectral irradiance incident on the proctective eyewear.

(9) "Sunlamp product" means any electronic product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body, by ultraviolet radiation with wavelengths in air between 180 and 320 nanometers, to induce skin tanning.

(10) "Timer" means any device incorporated into a product that terminates radiation emission after a preset time interval.

(11) "Ultraviolet lamp" means any lamp which produces radiation in the wavelength interval of 180 to 320 nanometers in air and is intended for use in any sunlamp product.

(c) *Performance requirements*—(1) *Irradiance ratio limits.* For each sunlamp product and ultraviolet lamp, the ratio of the irradiance within the wavelength range of greater than 180 nanometers through 260 nanometers to the irradiance within the wavelength range of greater than 260 nanometers through 320 nanometers shall not exceed 0.003 at any distance and direction from the product or lamp.

(2) *Timer.* (i) Each sunlamp product shall incorporate a timer with multiple timer settings adequate for the recommended exposure time intervals for different exposure distances and expected results of the product as specified in the label required by paragraph (d) of this section.

(ii) The maximum timer interval shall not exceed the recommended maximum exposure time as indicated on the label required by paragraph (d)(1)(vii) of this section, or 10 minutes, whichever is less. This requirement does not preclude a product from alllowing a user to reset the timer before the end of the preset time interval. No timer interval shall have an error greater than ±10 percent of the maximum timer interval of the product.

(3) *Control for termination of radiation emission.* Each sunlamp product shall incorporate a control on the product to enable the user manually to terminate radiation emission from the product at any time without disconnecting the electrical plug or removing the ultraviolet lamp.

(4) *Resumption of radiation emission.* When radiation emission from a sunlamp product has been terminated for any reason, including termination by a timer, resumption of such emission shall not be possible until the product is reactivated manually by the user.

(5) *Protective eyewear.* (i) Each sunlamp product shall be accompanied by the number of sets of protective eyewear that is equal to the maximum number of persons that the instructions provided under paragraph (f)(1)(iii) of this section recommend to be exposed simultaneously to radiation from such product.

(ii) The spectral transmittance of the protective eyewear required by paragraph (c)(5)(i) of this section shall not exceed a value of 0.001 over the wavelength range of greater than 180 nanometers through 320 nanometers and a value of 0.01 over the wavelength range of greater than 320 nanometers through 360 nanometers, and shall be sufficient over the wavelengths greater than 360 nanometers to enable the user to see clearly enough to read the labels and reset the timer.

(6) *Compatibility of lamps.* An ultraviolet lamp shall not be capable of insertion and operation in any of the following lampholders:

(i) "Single-contact medium screw," described in American National Standard C81.10–1976.

(ii) "Double-contact medium screw," described in American National Standard C81.10–1976.

(d) *Label requirements.* In addition to the labeling requirements in Part 801 of this chapter and the certification and identification requirements of §§ 1010.2 and 1010.3 of this chapter, each sunlamp product and ultraviolet lamp shall be subject to the labeling requirements prescribed in this paragraph and paragraph (f) of this section. All labels prescribed in this paragraph shall be permanently affixed or inscribed on an exterior surface of the product so as to be legible and readily accessible to view when the product is fully assembled for use.

(1) Each sunlamp product shall have a label which contains:

(i) The words "DANGER—Ultraviolet radiation. Follow instructions. As with natural sunlight, overexposure can cause eye injury and sunburn; repeated exposure may cause premature aging of the skin and skin cancer. Medications or cosmetics applied to the skin may increase your sensitivity to ultraviolet light. Consult physician before using lamp if taking any medication or if you believe yourself especially sensitive to sunlight."

(ii) Designation of the ultraviolet lamp type which is to be used in the product.

(iii) A recommended minimum use distance specified both in meters and in feet (or in inches).

(iv) Directions for measuring the minimum use distance.

(v) A warning that exposure at distances less than the mimimum use distance is not recommended.

(vi) A warning to use protective eyewear whenever the product is energized.

(vii) A recommended maximum exposure time in minutes.

(viii) A recommendation for duration, frequency, and spacing of sequential exposures.

(ix) A statement of the time it may take before the expected results appear.

(2) Each ultraviolet lamp shall have a label which contains:

(i) The words "Sunlamp—DANGER—Ultraviolet radiation. Follow instructions."

(ii) The model identification.

(iii) The words "Use ONLY in fixture equipped with a timer."

(3) In lieu of permanently affixing or inscribing tags or labels on the ultraviolet lamp as required by §§ 1010.2(b) and 1010.3(a) of this chapter, the manufacturer of the ultraviolet lamp may permanently affix or inscribe such required tags or labels on the lamp packaging uniquely associated with the lamp, if the name of the manufacturer and month and year of manufacture are permanently affixed or inscribed on the exterior surface of the ultraviolet lamp so as to be legible and readily accessible to view. When the tags or labels required by §§ 1010.2(b) and 1010.3(a) of this chapter are affixed or inscribed on the ultraviolet lamp packaging, the name of the manufacturer and month and year of manufacture required to be permanently affixed or inscribed on the exterior surface of the lamp may be expressed in code or symbols, if the manufacturer has previously supplied the Director, Bureau of Radiological Health, with the key to such code or symbols and the location of the coded information or symbols on the ultraviolet lamp.

(e) *Test for determination of compliance.* Tests on which certification pursuant to § 1010.2 of this chapter is based shall account for all measurement errors and statistical uncertainties in the measurement process and, wherever applicable, for changes in radiation emission or degradation in radiation safety with age of the product. The measurements shall be made under those operational conditions and procedures that maximize the emission of radiation and with the measuring instrument so positioned and so oriented as to result in the maximum detection of the radiation by the instrument. However, the measuring instrument shall be no closer to the product than the minimum use distance. Such measurements shall be made at a test voltage up to 130 root-mean-square volts if the sunlamp product or ultraviolet lamp is designed to operate from nominal 100 to 120 root-mean-square volt power sources. If the sunlamp product or ultraviolet lamp is designed to operate from a power source having some voltage other than from nominal 100 to 120 root-mean-square volts, the measurement shall be made at a voltage up to 110 percent of the maximum nominal root-mean-square voltage specified by the manufacturer for the power source.

(f) *Instructions to be provided to users.* Each manufacturer of a sunlamp product and ultraviolet lamp shall provide or cause to be provided to purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution, instructions for safe use, including the following technical and safety information as applicable:

(1) *Sunlamp products.* The users' instructions for a sunlamp product shall contain:

(i) A reproduction (color optional) of the label required in paragraph (d)(1) of this section prominently displayed at the beginning of the instructions.

(ii) A prominently displayed statement containing the words "DANGER—Ultraviolet radiation. Follow instructions. As with natural sunlight, overexposure can cause eye injury and sunburn; repeated exposure may cause premature aging of the skin and skin cancer. Medications or cosmetics applied to the skin may increase your sensitivity to ultraviolet light. Consult physician before using lamp if taking any medication or if you believe yourself especially sensitive to sunlight."

(iii) A statement of the maximum number of people who may be exposed to the product at the same time and a warning that only that number of protective eyewear has been provided.

(iv) Instructions for obtaining repairs and recommended replacement components and accessories which are compatible with the product, including compatible protective eyewear, ultraviolet lamps, timers, reflectors and filters, and which will, if installed or used as instructed, result in continued compliance with the standard.

(2) *Ultraviolet lamps.* The users' instructions for an ultraviolet lamp not accompanying a sunlamp product shall contain:

(i) A reproduction (color optional) of the label required in paragraph (d)(2) of this section, prominently displayed at the beginning of the instructions.

(ii) A statement prominently displayed containing the words "DANGER—Ultraviolet radiation. Follow instructions. As with natural sunlight, overexposure can cause eye injury and sunburn; repeated exposure may cause premature aging of the skin and skin cancer. Medications or cosmetics applied to the skin may increase your sensitivity to ultraviolet light. Consult physician before using lamp if taking any medication or if you believe yourself especially sensitive to sunlight."

(iii) A warning that the instructions accompanying the sunlamp product should always be followed to avoid or to minimize potential injury.

Effective date. This regulation shall be effective May 7, 1980.

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

Dated: October 30, 1979.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 79-34635 Filed 11-8-79; 8:45 am]

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payment Program—Existing Housing: Special Assistance on Behalf of Mobile Home Owners

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-79-646]

Section 8 Housing Assistance Payment Program—Existing Housing: Special Assistance on Behalf of Mobile Home Owners

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

ACTION: Final rule.

SUMMARY: The Department is issuing a final rule to amend the Section 8 Existing Housing Program regulations to permit assistance payment to be made, through Public Housing Agencies (PHAs), to assist lower-income Mobile Home Owners in paying the rents for the spaces on which their Mobile Homes are located. This final rule implements statutory changes.

EFFECTIVE DATE: December 10, 1979.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Director, Existing Housing Division, Office of Existing Housing and Moderate Rehabilitation Programs, Department of Housing and Urban Development, Washington, D.C. 20410, telephone (202) 426-0910. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 8(j) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (Act), which was added by Section 206(f) of the Housing and Community Development Amendments of 1978, authorizes the Secretary to execute Annual Contributions Contracts (ACCs) with Public Housing Agencies (PHA) for the purpose of assisting lower-income families, who own and occupy their Mobile Homes as their principal places of residence, in connection with rental of the space on which their Mobile Homes are located. On May 11, 1979, a proposed revision to the Section 8 Existing Housing Program regulations, 24 CFR Part 882, was published for public comment in the Federal Register at 44 FR 27926. The department proposed to add a new Subpart F, Special Assistance on Behalf of Mobile Home Owners, to set forth a new definition of Mobile Home for the Section 8 Existing Housing Program (applicable to both renters and owner-occupants) and to amend the Housing Quality Standards, found at Section 882.109, by modifying the Acceptability Criteria for Mobile Homes. Interested parties were given until July 10, 1979 to submit written comments. By the end of the comment period, comments were received from 53 organizations and individuals. Based on these comments, several changes are being made in the final rule. A discussion of the principal changes and of the more recurrent and significant comments are discussed below.

Purpose

This final rule, in accordance with Section 8(j), specifies criteria under which PHAs may make assistance payments on behalf of eligible families who own their Mobile Homes but rent the spaces on which their Mobile Homes are located. Prior to this amendment, Mobile Home Owners were not eligible to receive assistance in leasing the Mobile Home Space. Except as indicated by this Subpart, the provisions of Part 882, Subparts A and B, shall apply. References in Subparts A and B to units leased by any Family shall be deemed in Subpart F to refer to Mobile Home Spaces on which Mobile Home units, owned and occupied by Assisted Families, are located. Subparts D and E, Special Procedures for the Moderate Rehabilitation Program, published as a final rule on May 4, 1979, do not apply because that rule specifically excludes moderate rehabilitation of Mobile Homes.

Definitions

Several commenters felt that there should not be separate definitions in this Subpart so that program standards for the total Section 8 program would remain consistent. While the Department feels that there is merit in program consistency, separate definitions are required because of the unique statutory requirements in Section 8(j) of the U.S. Housing Act of 1937.

1. *Mobile Home.* A Mobile Home is a structure, with or without a permanent foundation, which is built on a permanent chassis, is designed for use as a principal place of residence, and meets the Housing Quality Standards set forth in Section 882.109.

This definition is not changed in the final rule and is based on the definition in the National Mobile Home Construction and Safety Standards Act of 1974 (Standards Act), but is less restrictive than the Standards Act. Comments received from Mobile Home organizations supported the use of the definition cited above because, since the Standards Act definition is applicable to Mobile Homes constructed after December 31, 1976, many Mobile Homes constructed prior to that date would not qualify under the stricter Standards Act definition. This definition of Mobile Home is applicable to all families in Mobile Homes for whom assistance payments are made, whether the families lease or own the units.

2. *Contract Rent.* Contract Rent is the monthly rent to the Owner of the Mobile Home Space, including any separate fees or charges for the leasing of the Mobile Home Space. This rent includes the maintenance and management services described in the definition of Mobile Home Space, but excludes ongoing utility charges. Separate fees or charges for other services or facilities are included in the Contract Rent only if their payment is required as a condition of the leasing of the Mobile Home Space. Comments suggesting that the current definitions in the Section 8 program for Contract Rent and Gross Rent be used were not accepted because they would create confusion since, as used in this Subpart F, Contract Rent does not pertain to rent for a leased unit.

3. *Fair Market Rents.* The definition of Fair Market Rents (which is unchanged from the proposed rule) includes maintenance and management services, but excludes ongoing utility charges and is consistent with the definitions of Contract Rent and Mobile Home Space. The Fair Market Rents are those which, as determined at least annually by HUD, would be required to be paid in order to obtain decent, safe and sanitary Mobile Home Spaces of modest nature with the required maintenance and management services. See subheading "Fair Market Rents" for discussion of how Fair Market Rents apply depending on the size of the space and size of the Assisted Family.

4. *Family Contribution.* The definition in the proposed rule for Family Contribution remains unchanged. The Family Contribution is 25 percent of one-twelfth of annual income after allowances, in accordance with 24 CFR, Part 889. This definition is consistent with the Section 8 Program. Two comments were received which suggested a change in the method for determining the Family Contribution. These were not accepted since this definition is required by Section 8(j)(3) of the Act.

5. *Set-Up Charges and Utility Hook-Up Charges.* Several comments reflected confusion concerning the use of and reasons for separate definitions for Set-Up Charges and Utility Hook-Up Charges. Some comments indicated that Set-Up Charges, for example, are not normally incurred separately since they are part of the purchase price of a Mobile Home. The final rule retains the separate definition in the proposed rule

for Set-Up Charges as costs related to the purchase of a Mobile Home because the Department assumes that such costs still will be payable in some cases by Assisted Families who move. The Department has determined that Set-Up Charges shall include assembling, skirting and anchoring the unit at the site but do not include any charges incurred in transporting the Mobile Home to the site.

6. *Utility Hook-Up Charges.* The definition of Utility Hook-Up Charges in the proposed rule is not changed in the final regulation. The Department recognizes that there exists a significant difference between costs payable by an Assisted Family to connect its Mobile Home to utilities such as water, gas, electrical and sewer lines and the cost, if any, paid by renters of other types of existing housing for similar amenities. For example, apartment renters are not responsible for the cost of connecting electricity or gas service to their apartments.

Thus, the use of Utility Hook-Up Charges is necessary when the Mobile Home family incurs the expenses except that allowances for Utility Hook-Up Charges in the final rule shall not apply to families leasing the Mobile Home Space in place since the cost for such charges was not incurred after the family's initial participation in the program.

7. *Mobile Home Space.* The final rule retains the same definition of a Mobile Home Space as published in the proposed rule (i.e., the space leased by an Owner to an Assisted Family on which a Mobile Home owned and occupied by the Family is located). The space must include all maintenance and management services necessary for decent, safe and sanitary housing such as maintenance of utility lines, garbage and trash collection, and maintenance of roadways, walks and other common areas and facilities. No comments were received concerning this definition.

8. *Owner.* Several comments were received to include cooperatives in the definition of owner. The final rule has been changed to include cooperatives.

Eligibility

The proposed rule specified that eligible Mobile Home Owners must be issued a Certificate of Family Participation appropriate for the Family size and that a Family's income for eligibility would be determined in accordance with 24 CFR, 889.103, Determination of Family Income for Eligibility, except that the value of equity in a Mobile Home owned by a Family would not be counted as a family asset. Eight comments were received concerning these eligibility criteria. Three commenters objected to this procedure, basing their comments on the lack of a close correlation between household size and the number of bedrooms for Mobile Home Owners. Two commenters supported the proposed rule since the Housing and Community Development Amendments of 1978 did not specify different eligibility criteria for Mobile Home Owners.

Other comments expressed concern for the difficulty the proposed rule could impose on certain households since Mobile Homes are generally constructed with a minimum of two bedrooms with the result that one-person households, such as elderly and handicapped persons, might be ineligible based on current Section 8 occupancy standards. Additional comments questioned the need for specifying the number of bedroom sizes on the Certificate, since the cost of the space rent in a Mobile Home park is based on the lot size required for the unit rather than the number of its bedrooms.

The Department has determined that the final rule will maintain the policy of issuing Certificates based on the Family's size. The number of bedrooms on the Certificate shall be used for the purposes of determining appropriate utility allowances to be used under this subpart. A major consideration by the Department in specifying that Certificates be issued based on the Family size was consistency with current occupancy standards applied to lower-income families assisted by this program. In addition, the number of bedrooms on the Certificate is necessary to determine the maximum assistance payment for the space rental since the utility allowances, which are established on the basis of different bedroom sizes, are used in determining the Family's total housing expense. However, a Family may occupy a larger Mobile Home than shown on the Certificate of Family Participation and locate it on a single-wide or double-wide space. If the Family is only eligible for a single-wide space and elects to occupy a double-wide space, the Family is responsible for any and all excess charges over the Contract Rent and utility allowance approved for the Family. Clarifying language has been added in a new Section 882.603, Certificates of Family Participation for Mobile Home Owners to incorporate this eligibility criteria.

The Department received numerous comments objecting to the provision concerning the value of equity in a Mobile Home not being counted as a Family asset. Commenters felt this change would discriminate against other lower-income families who are not Mobile Home Owners but hold other forms of assets of equal value. The current § 882.103, Determination of Family Income for Eligibility, states that "when a Family has Net Family Assets in excess of $5,000, income shall include the actual amount of income, if any, derived from all the Net Family Assets or 10 percent of the value of all such assets, whichever is greater." Currently, the effect of this computation often increases a Family's income to an amount exceeding its applicable income limit. Since the sole reason for including assets is that they represent potential financial resources available to the Family, several commenters suggested that to make exception for a specific asset form would be unfair to other Section 8 participants. One commenter felt that "if equity in a Mobile Home makes a Family ineligible * * * so be it." Other comments supported this exclusion because it is the only asset held by many elderly households; however, the value of this asset is limited, since unlike real property, Mobile Homes generally decrease in value in later years.

After evaluating the comments submitted concerning this question of equity, the Department has determined to keep the proposed rule unchanged because to include equity in a Mobile Home as an asset is contrary to the purpose of Section 8(j). The statute intended to extend Section 8 eligibility to cover a maximum number of Mobile Home Owners. The report of the House Committee on Banking, Finance and Urban Affairs, with respect to its version of the Act, found that: "Almost half a million such households (owner-occupants of Mobile Homes) pay more than 25 percent of their income for housing costs while 225,000 of those households pay more than 35 percent of their income for housing and 100,000 pay more than 50 percent of their income for housing. The data (from the 1976 Annual Housing Survey) also suggest that a significant number of people over 65 living on fixed incomes own and live in Mobile Homes." In sum, the Department believes that there are compelling reasons to exclude the value of equity in a Mobile Home as an asset.

No Special Allocations

The preamble to the proposed rule specified that the special assistance on behalf of Mobile Home Owners would be implemented as a part of the Section 8 Existing Housing Program (24 CFR, Part 882) and that no additional allocations of contract authority nor of

units would be necessary to implement this Subpart F. Numerous commenters, including organizations of Mobile Home Owners, objected to this policy because many PHAs have backlogs of applications for housing assistance in the Section 8 Existing Housing Program. Three commenters pointed out that, due to the long waiting lists, many PHAs have suspended the taking of applications for assistance in accordance with § 882.207(c), and that Mobile Home Owners would not be able to apply in the foreseeable future. Other commenters suggested that unless Mobile Home Owners were given preferences by PHAs in issuance of Certificates, or unless PHAs were permitted to set-aside a proportionate share of Certificates for Mobile Home Owners assisted by this Subpart, the proposed special assistance would likely not be available for many eligible Mobile Home Owners.

The Department wishes to point out that no special funds were appropriated to implement this subpart, and that it has determined not to provide any special allocation of contract authority.

To facilitate implementation of this special assistance, PHAs may establish preferences for issuing Certificates to eligible Mobile Home Owners in accordance with § 882.209(a)(3). Such preferences must be specified in a revision to the PHA's Administrative Plan which must be approved by the HUD Field Office. Preferences for those living in the PHA's jurisdiction at the time of application are permissible, except that no preference may be based on the identity or location of the housing which is occupied or proposed to be occupied by the applicant nor upon the length of the time the applicant has resided in the jurisdiction. The proportion of Certificates to which a Mobile Home Owners' preference may be applied as specified in the Administrative Plan must be consistent with the overall objective of serving the need of all eligible lower income applicants equitably.

While leasing of a Mobile Home Space is the same as leasing a unit for leasing schedule purposes, the rents for spaces generally will be less than housing assistance payments for units, so that the same amount of contract authority will enable PHAs to assist a greater number of families than authorized in the ACC. Therefore, although no set-asides of units nor of contract authority will be provided by HUD, PHAs will be able to provide assistance to a large number of Mobile Home Owners. Revisions by PHAs concerning the number of families assisted, however, must be done in accordance with current HUD procedures outlined in the HUD processing handbook 7420.3 REV. 2 Chg. 1 for variations from the unit mix stated in the ACC.

Contract Rent

The proposed regulation specified that the Contract Rent was the monthly rent payable to the Owner of the space, including any separate fees or charges, for the leasing of the Mobile Home Space. Commenters did not object to the proposed rule, and HUD is not changing this proposed definition in the final rule. However, several commenters indicated confusion over whether the PHAs prerogative to approve Gross Rents by up to 20 percent above the Fair Market Rent is applicable. This provision for 20 percent approval authority is not permitted because Section 8(j) of the Act restricts exception rents for this program to 10 percent.

Fair Market Rents

Twelve comments were received objecting to the proposed policy to establish Fair Market Rents for spaces suitable for various size (by bedroom) of Mobile Home units. Commenters stated that FMRs should be based on site rents for single-wide and double-wide spaces and pointed out that the prevailing practice in most markets was to determine the space size by the size of the Mobile Home unit rather than its number of bedrooms. Commenters also pointed out the problem that the same size Mobile Home Space can frequently accommodate units with different bedroom size units.

Fair Market Rents are being established for Standard Metropolitan Statistical Areas (SMSA) and non-SMSAs for single-wide and double-wide Mobile Home Spaces. Rents for double-wide spaces will be permitted only for families of five or more persons. This limitation will prevent potential inequities resulting from smaller families receiving the same level of assistance as larger families.

The Fair Market Rents for Mobile Home Spaces are being published separately.

Maximum Assistance Payment

Several comments suggested alternative ways of calculating the maximum assistance payment made by a PHA on behalf of Mobile Home Owners. These suggestions were not adopted because Section 8(j) of the Act specifically states that the maximum assistance payment for the rental of a Mobile Home Space is the difference between the Family Contribution and the sum of (1) the payment by the Family to amortize the purchase price of its Mobile Home, (2) the utility allowance and, (3) the Contract Rent for the space under lease. The assistance payment may not exceed the Contract Rent. Section 882.604 of the final rule sets forth this formula for assistance payments. The examples in the proposed rule, which illustrated how the above limitation affects the amount of assistance, are as follows:

A

Fair market rent is	$130
1. Mortgage payment	142
2. Utility allowance	55
3. Space rental (minus utilities)	+115
Total family cost	312
Minus family contribution	−140
Difference	172
Assistance payment is	115

B

Fair market rent is	$130
1. Mortgage payment	142
2. Utility allowance	55
3. Space rental (minus utilities)	+115
Total family cost	312
Minus family contribution	−200
Difference	112
Assistance payment is	112

The utility allowance of $55 in each example is included to determine the amount of the assistance payment. There is no provision in the final rule, nor in the Act, for including utilities in the Contract Rents for Mobile Home Spaces. When the rent charged by the Owner includes some or all utilities, the rent will be adjusted by subtracting the utility allowance to determine the "space rental."

The assistance payment in Example A is $115 (cost of space rental), even though the difference between the total Family cost and the Family Contribution is greater than the space rental. In example B, however, the computation is based on a higher Family Contribution of $200, so that the difference between the total Family cost and Family Contribution is $112. In this instance, the assistance payment is limited to the $112 difference even though it is less than the space rental cost.

The proposed rule stated that the purchase cost of furniture may not be included as part of the purchase price of the Mobile Home. Numerous comments objected to this provision because of the unique manner in which furniture in a Mobile Home is purchased. The Department recognizes that the majority of Mobile Homes are sold furnished and,

in some instances, the cost of furniture is an indistinguishable part of the purchase price. The Department also recognizes that it may be difficult to allocate costs between home and furnishings for Mobile Homes already purchased. Nevertheless, the Department does not believe Mobile Home Owners assisted under the Section 8 Existing Housing Program should be treated differently from other lower-income families receiving Section 8 assistance in rental units. Therefore, the final rule maintains the exclusion of furniture in the purchase price. For the purposes of this Subpart, mortgage payments on the purchase price of the Mobile Home shall include principal and interest payments less 15 percent to account for the costs attributed to furniture unless there is evidence that furniture was not included in the purchase price. The specific percentage, 15 percent, was obtained by consultation with numerous Mobile Home organizations. Principal and interest payments are those established at time of application, and principal and interest due to later refinancing must not be allowed.

The purchase price to be amortized includes the cost of the Mobile Home discussed above, the Set-Up Charges, and other costs normally included in the purchase price of Mobile Homes. Set-Up Charges may be included in the amount to be amortized, whether incurred by a Family on a newly purchased Mobile Home or by a Family which moves its existing Mobile Home to another Mobile Home Space. Set-Up Charges previously incurred by the Assisted Family may be included only to the extent that current monthly payments (after Certificate approval) are still being made to amortize them. The final rule has been clarified in Section 882.604 to reflect these changes.

Separate Utility Allowances

The final rule does not change the provisions of the proposed rule for PHAs to establish separate utility allowances for Mobile Home Owners in amounts appropriate to the Family size. Several comments questioned the need for separate allowances and did not understand their purpose and use. Two commenters recommended that only one utility allowance be established by PHAs for all assisted Mobile Home Owners without regard to bedroom size. As stated in the explanation of the above illustration, utility allowances are to be used for the purpose of establishing an Assisted Family's total housing cost (mortgage payment, utilities, space rental), arriving at an amount which, when reduced by the Family Contribution, is the assistance payment. Utility allowances must be appropriate for the number of bedrooms and shall be determined by PHAs in accordance with Section 882.606.

The proposed rule also stated that the utility allowance would include a reasonable allowance, for the first twelve months, that would assist the Family in defraying payable Utility Hook-Up Charges which the Family incurred by reason of a move. Several commenters supported this provision since it is a one-time cost which the Assisted Family should be able to pay within a reasonably short time.

The proposed rule is not changed in § 882.606 of the final rule except to state that allowances for Utility Hook-Up Charges shall not apply to families leasing the Mobile Home Space in place.

Housing Quality Standards

The proposed rule stated that all Housing Quality Standards of § 882.109 would apply except for § 882.109(m), Congregate Housing, and § 882.109(n), Independent Group Residences. In addition, a standard would be added in a new § 882.109(o), to require Mobile Homes assisted under the Section 8 Existing program (both owner and renter occupied) to have at least one smoke detector. The Housing Quality Standard now in effect requiring anchoring of Mobile Homes would be moved to Section 882.109(o).

HUD received numerous comments (both pro and con) concerning the requirement for anchoring of Mobile Homes. Some commenters agreed with the tie-down requirement, contending that some areas subject to high winds and tornados have inadequate protection for tie-downs in State or local laws. Other commenters objected to a Federal tie-down requirement for all parts of the country. Several Mobile Home Owners' organizations observed that anchoring with a tie-down device is appropriate in areas subject to heavy winds, but is not advantageous and may be dangerous in areas which are subject to earthquakes.

Based on these comments and the lack of a uniform nationwide standard, HUD has revised the final rule in Section 882.109(o) to require tie-downs as an Acceptability Criteria for both renter and owner occupied Mobile Home units. Since the tie-down requirement is an Acceptability Criteria rather than a performance requirement, variations can be approved by the HUD Field Office based on local climatic or geological conditions or local codes. The Department is establishing a Performance Standard that the Mobile Home be placed on the site in a stable manner and be free from hazards such as sliding or wind damage. This requirement can be satisfied by various devices short of tie-downs. The requirement for at least one smoke detector in Mobile Home units was supported almost universally by commenters and remains unchanged in the final rule.

Mobile Homes Accessibility to the Handicapped

In determining how to make Mobile Homes and Mobile Spaces accessible to the Handicapped, PHAs and other interested organizations may wish to refer to HUD publication, "Mobile Homes, Alternative Housing for the Handicapped", No. 023-000-00393-7, which can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Other Program Changes

The following provisions of Part 882 are inappropriate and inapplicable to this Subpart F. Section 882.115, Rent Reduction Incentive, does not apply because there are significantly fewer opportunities to lease Mobile Home Spaces and fewer opportunities for families to shop for alternative Mobile Home Spaces. Although several Mobile Home Owners groups objected to this exclusion because it would not extend a current program benefit to equally needy Mobile Home Owners, the Department is not changing this provision for the reasons stated. Section 882.102, Recently Completed Housing, is not applicable because the rental of the space is predominately for the rental of the land rather than improvements.

Comments From Individuals

Many comments were received from lower-income persons who would benefit from this regulation. All were generally supportive of its issuance, pointing to their individual financial circumstances as evidence of the need for this kind of assistance.

Delegation of Authority

The Department is revising § 882.110(c)(1) to delegate from the Regional Administrator to the Field Office Area Manager the authority to exceed the 40 percent limitation on the total number of units in the project covered by Housing Assistance Payments Contracts receiving Section 23 rental assistance, rent supplement assistance, Section 236 "deep subsidy" rental assistance payments, or State or local subsidy (other than property tax exemption or abatement). Public comment on delegations of functions within HUD is not required.

NEPA

A Finding of Inapplicability with respect to environmental impact has been prepared in accordance with HUD Procedures for Protection and Enhancement of Environmental Quality. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

The Department has kept these comments in mind in finalizing this rule. Accordingly, 24 CFR, Part 882 is revised as follows:

§ 882.102 [Amended]

1. Insert in § 882.102 the following definition:

Mobile Home. A structure, with or without a permanent foundation, which is built on a permanent chassis, is designed for use as a principle place of residence, and meets the Housing Quality Standards set forth in § 882.109.

§ 882.109 [Amended]

2. Add a new paragraph (o) in § 882.109, to read as follows:

(o) *Mobile Home.*—(1) *Performance Requirement.* A Mobile Home unit, whether owner or renter occupied, shall comply with the foregoing standards except for paragraph (m) of this section, Congregate Housing, and paragraph (n) of this section, Independent Group Residences. In addition, a Mobile Home unit shall:

(a) meet the definition of a Mobile Home set forth in § 882.102,

(b) be equipped with at least one smoke detector in working condition, and

(c) must be placed on the site in a stable manner and be free from hazards such as sliding or wind damage.

(2) *Acceptability Criteria.* A Mobile Home must be securely anchored by a tie-down device which distributes and transforms the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

3. Delete the last sentence in § 882.109(f)(2).

§ 882.110 [Amended]

4. In the last sentence and the second to last sentence of § 882.110(c)(1), change "Regional Administrator" to "Field Office Manager."

5. Insert a new Subpart F, Special Assistance on Behalf of Mobile Home Owners, as follows:

Subpart F—Special Assistance on Behalf of Mobile Home Owners

Sec.
882.601 Applicability and scope.
882.602 Definitions for this Subpart.
882.603 Certificate of Family Participation for Mobile Home Owners.
882.604 Assistance payments.
882.605 Maximum Contract Rent.
882.606 Schedule of Allowances for Utilities and Other Services.

§ 882.601 Applicability and scope.

This Subpart provides for the making of housing assistance payments on behalf of lower-income Mobile Home Owners to assist them in leasing Mobile Home Spaces. The PHA executes Contracts with the owners of spaces on which the Mobile Homes are located. The Mobile Homes must be used by lower-income Families as their principal places of residence. Except as indicated by this Subpart, Part 882, Subparts A and B shall apply. References made in Part 882 to dwelling units shall, for purposes of this Subpart F, be read as referring to Mobile Home Spaces. Subparts D and E, Special Procedures for Moderate Rehabilitation Program, do not apply because moderate rehabilitation of Mobile homes is excluded under this rule.

§ 882.602 Definitions for this subpart.

The definitions in § 882.102 shall apply except for Contract Rent, Fair Market Rent, Gross Rent, Recently Completed Housing and Rent Reduction Incentive.

Assisted Family. A Family which qualifies as an eligible lower-income Family pursuant to Part 812, occupies its Mobile Home as its principal place of residence, is issued a Certificate of Family Participation, leases but does not own the Mobile Home Space and is assisted under this Subpart. A Family's income for eligibility shall be determined in accordance with 24 CFR 889.103 except that the value of equity in a Mobile Home owned by an Assisted Family shall not be counted as a Family asset.

Contract Rent. The monthly rent which an Owner is entitled to receive for the leasing of a Mobile Home Space to an Assisted Family, including any separate fees or charges. This rent includes the maintenance and management services described in the definition of Mobile Home Space, but excludes ongoing utility charges. Separate fees or charges for services or facilities not included in the definition of Mobile Home Space shall be included in the Contract Rent only if their payment is required as a condition of the leasing of the Mobile Home Space. In the case of a cooperative Mobile Home park, "Contract Rent" means the charges under the occupancy agreements between the members and the cooperative.

Fair Market Rent. The rent which, as determined at least annually by HUD, would be required to be paid in order to obtain privately owned, decent, safe and sanitary Mobile Home Spaces of modest nature. This rent includes maintenance and management services described in the definition of Mobile Home Space for single-wide and double-wide Mobile Home Spaces. Rents for double-wide spaces will be permitted for Assisted Families of five or more persons so long as the Mobile Home meets the minimum occupancy standards for families in accordance with § 882.209(a)(2).

Family Contribution. The Family Contribution shall be twenty-five percent of one-twelfth of the Family's annual income after allowances in accordance with 24 CFR, Part 889. Section 882.115, Rent Reduction Incentive, and the last sentence of § 882.210(c)(1), Amount of Rent Payable by Family to Owner, shall not apply.

Mobile Home Space. The space, leased by an Owner to an Assisted Family, on which the Mobile Home owned and occupied by the Family is located. The space shall include all maintenance and management services necessary for decent, safe and sanitary housing, such as maintenance of utility lines, garbage and trash collection, and maintenance of roads, walkways and other common areas and facilities.

Owner. The Owner of the Mobile Home Space is any person or entity including a cooperative, having the legal right to lease or sublease Mobile Home Spaces.

Set-Up Charges. Charges payable by an Assisted Family for assembling, skirting and anchoring the unit.

Utility Hook-Up Charges. Costs payable by an Assisted Family for connecting its Mobile Home to utilities such as water, gas, electrical and sewer lines.

§ 882.603 Certificate of family participation for mobile home owner.

The provisions of § 882.209, Certificate of Family Participation, shall apply except for paragraphs (b)(3), (b)(6), (b)(7), (b)(8) and (c)(2). Instead the following new paragraph (g) shall apply:

(g) Certificate of Family Participation for Mobile Home Owners: In issuing the Certificate of Family Participation for Mobile Home Owners, the PHA shall enter on the Certificate the number of bedrooms appropriate for the Family size, in accordance with § 882.209, for the purpose of determining the Family's appropriate utility allowance.

§ 882.604 Assistance payments.

The provisions of § 882.105, Housing Assistance Payments to Owners, shall

apply except for paragraph (a). Instead of § 882.105(a), the following shall apply: Assistance payments to the Owner will cover the difference between the Family Contribution and the sum of (1) the monthly payment made by the Family to amortize the purchase price of the Mobile Home, (2) the utility allowance and (3) the Contract Rent. However, the assistance payment may not exceed the Contract Rent. Amortization payments may include costs other than furniture included in the purchase price of the Mobile Home; the portion of the amortization costs covering principal and interest shall be reduced by 15 percent to exclude the cost of furniture unless there is evidence that furniture was not included in the purchase price. Principal and interest payments are those established at time of application; any increase in principal and interest due to later refinancing must not be allowed. Set-Up Charges incurred by Assisted Families who relocate their home may be included in the monthly amortization payments made by the Family; however, Set-Up Charges incurred prior to the effective date of the Contract may be included to the extent that monthly payments are still being made to amortize them.

§ 882.605 Maximum contract rent.

(a) The provisions of § 882.106(a) (3) and (4) and § 882.106(c) shall not apply.

(b) The provisions of § 882.120, concerning Recently Completed Housing, shall not apply.

(c) The Contract Rent for any Mobile Home Space leased under this Subpart shall not exceed the applicable Fair Market Rent by more than ten percent, nor shall it exceed the rent reasonableness limitation specified in § 882.106(b).

§ 882.606 Schedule of allowance for utilities and other services.

The provisions of §§ 882.116 and 882.219 relative to PHAs establishing and adjusting a Schedule of Allowances for Utilities and Other Services shall apply.

Utility allowances shall be established for Mobile Home Owners assisted under this Subpart and shall be in amounts appropriate for bedroom size as stated on the Certificate. Allowances shall include a reasonable amount, for the first twelve months, to assist the Family in defraying its payable Utility Hook-Up Charges in those instances where the Family actually incurs the expenses, by reason of a move. Allowances for Utility Hook-Up Charges shall not be applicable to families leasing the Mobile Home Space in place. The assistance payment shall automatically be reduced by the amount of those charges at the end of the twelve months. Allowances for Mobile Home Spaces shall not cover costs payable by an Assisted Family to cover the digging of a well or installation of a septic system.

Authority: Section 7(d) Department of HUD Act, 42 U.S.C. 3535(d).

Issued at Washington, D.C., November 1, 1979.

Morton A. Baruch,

Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

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Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

PHA-Owned Public Housing Projects—Demolition of Buildings or Disposition of Real Property; Policy and Procedures

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of The Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 870

[Docket No. R-79-600]

PHA-Owned Public Housing Projects—Demolition of Buildings or Disposition of Real Property; Policy and Procedures

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is issuing a final rule adding Part 870 to provide policy and procedures regarding partial or total demolition of buildings and partial or total disposition of land of PHA-owned public housing projects.

EFFECTIVE DATE: December 10, 1979.

FOR FURTHER INFORMATION CONTACT: Wayne Hunter, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6460. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 27, 1978, the Department published a Notice of Proposed Rulemaking (43 FR 60301) to specify requirements pertaining to the demolition or disposition of public housing property. A subsequent Notice, published on April 16, 1979, (44 FR 22472), extended the public comment period to May 16, 1979.

A total of 54 comments were received. Each comment was carefully considered. The following is a summary of the comments received and the changes made to the proposed rule.

Some comments reflected a misunderstanding of HUD's intent in publishing a rule on this subject. Contrary to the apprehensions expressed in those comments, this rule does not signal a relaxation of standards or encouragement for reducing the stock of public housing. HUD's intent is to codify its present policy of maximum conservation of existing public housing.

This rule provides that demolition or disposition shall be used only as a last resort, in those special situations where it can be convincingly demonstrated that continued operation as low-income public housing cannot be justified. Approval for demolition or disposition can be given only by the Assistant Secretary for Housing. Decisions will be based on thorough documentation submitted by the PHA and careful review by HUD staff.

The second sentence of § 870.2 has been revised to provide that this rule is not applicable to the sale of dwellings to homebuyers under any homeownership opportunities program.

In response to several comments, the definition of "demolition" (§ 870.3) has been modified to make it clear that the term includes partial demolition of a single building, if razing of dwelling units or nondwelling space results. The definition of "disposition" has also been changed to indicate that the determination of what constitutes "normal operation of the project for low-income housing and related purposes" is governed by the ACC.

The policy statement of § 870.4 remains consistent with that stated in the proposed rule. A number of commentors argued that this statement was too vague and objected to qualifying language, such as "every reasonable effort." HUD has nevertheless determined that the provision is a sound policy statement and serves as a basis for the more precise formulation of criteria set forth in § 870.6 of the final rule.

A significant change has been made in the first sentence of § 870.5. The parallel provision of the proposed rule stated that written HUD approval shall be required for demolition or disposition. The final rule specifies that only the Assistant Secretary for Housing may approve demolition or disposition.

Several commentors recommended that § 870.5 go into much greater detail as to the content of the supporting documentation to be submitted with the PHA's request for HUD approval of demolition and/or disposition. HUD does not consider this necessary or appropriate. Detailed procedural instructions will be covered in a HUD Handbook which will be distributed to all PHAs. The requirement for a relocation plan for displaced tenants has been placed in this section, a more appropriate position than the section on criteria, where it was placed in the proposed rule, and language has been added to require the PHA to pay the actual reasonable moving expenses of displaced tenants. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, mentioned by some commentors, is not applicable.

The provision on criteria (§ 870.7) has been extensively revised, in response to comments which advocated a stricter and more precise approach. Some commentors expressed the view that demolition should not be permitted when the need for low-income housing exceeds the availability of low-income units. Others said that, while factors other than housing need may deserve consideration, the proposed rule would allow HUD to give excessive weight to them.

In response to these concerns, the final rule distinguishes between primary and secondary criteria (§ 870.6). The primary criteria relate to local needs for low-income housing and to the physical condition of the property. Other factors—such as location, social conditions and density—are relegated to secondary consideration.

In connection with the needs criterion, some commentors argued that the provision on replacement housing should be strengthened by eliminating the condition regarding availability of funds and stipulating that the replacement housing must be over and above development levels planned without reference to the proposed demolition and/or disposition. The final rule modifies the replacement housing provision to specify that the determination as to the availability of funds will be made by HUD.

The final rule tightens the second of the two primary criteria as it pertains to the feasibility of rehabilitation. Rehabilitation will be considered feasible if its estimated cost does not exceed applicable prototype cost limits. This final rule eliminates consideration of the availability of rehabilitation funds.

The secondary criteria (§ 870.6b) listed in the final rule are modified versions of some of the criteria listed in the proposed rule. Those pertaining to social conditions and density have been limited by specifying that they may be considered only with regard to project marketability. The criterion relating to disposition of limited interests in real estate (§ 870.6b(4)) is expanded to include reference to benefits to the public interest, as well as to the project itself. The criterion in the proposed rule concerning the effect on the surrounding neighborhood and wider community, was deleted as being too vague. Such factors are covered under location, social conditions and the last of the secondary criteria—consideration of the views of tenants and the local governing body.

Another major area for comment was the section on tenant participation. A number of commentors argued that tenants should have veto power over proposals for demolition and/or disposition, rather than the advisory role indicated in the proposed rule. Several commentors advocated that HUD impose an elaborately detailed, uniform procedure for tenant participation. The tenant participation section of the final rule (§ 870.7) retains the approach set forth in the proposed rule, but adopts the suggestion of some commentors that

the PHA be required to submit to HUD copies of written tenant comments and recommendations, rather than a mere summary of them. This approach to tenant participation is consistent with the Department's present general policy on the subject, as similarly expressed in requirements for the Modernization Program.

The proposed rule's provision on waiver of tenant participation requirements in the case of emergencies has been deleted. A situation posing an immediate threat to life, health or safety might warrant expeditious action including HUD waiver of certain procedures under this part. Tenant participation requirements were not meant to be singled out for such waiver, as the requirements to be waived would depend on the individual situation.

Some commentors felt that HUD should make special provision for technical assistance to the tenants or tenant organization. HUD cannot provide special funding for this purpose. The PHA might, however, provide such funding, to the extent consistent with requirements pertaining to permissible expenditures of operating funds and modernization funds.

One commentor pointed out that the proposed rule made no reference to historic preservation requirements. This omission has been rectified by § 870.8, which specifies compliance with both environmental and historic preservation requirements of Federal law.

The provision on A-95 clearance (§ 870.9) has been changed to conform with existing HUD regulations governing the thresholds for A-95 review (24 CFR Part 52). Some commentors argued for a threshold of fewer than 100 dwelling units as specified in the proposed rule, or for elimination of any threshold. The Department believes, as stated in § 52.102(a) of the HUD regulation, that the thresholds identified in paragraph 7, Part I Attachment A of OMB Circular No. A-95 are appropriate. The final rule thus requires Clearinghouse review for requests to demolish or dispose of 50 or more dwelling units in urbanized areas as defined by the U.S. Bureau of the Census, and for requests to demolish or dispose of 25 or more dwelling units in all other areas.

Some commentors advocated elaboration of § 870.10, with regard to procedures for disposition of property determined to be excess. One commentor recommended that HUD restrict use of sale proceeds to housing or certain other types of public purposes. Section 870.10 merely reflects a provision of the ACC, and no requirements inconsistent with that ACC provision may be adopted. HUD believes that, if any further procedural guidance on this point is needed, it should be included in a Handbook.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedure. A copy of the Finding of Inapplicability is available for public inspection during regular business hours at the office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, 24 CFR is amended by adding Part 870 as set forth below.

PART 870—PHA-OWNED PUBLIC HOUSING PROJECTS—DEMOLITION OF BUILDINGS OR DISPOSITION OF REAL PROPERTY

Sec.
870.1 Purpose.
870.2 Applicability.
870.3 Definitions.
870.4 HUD policy.
870.5 PHA request for HUD approval.
870.6 Criteria.
870.7 Tenant participation.
870.8 Environmental and historic preservation requirements.
870.9 A-95 clearance.
870.10 Disposition of excess property.

Authority: Sec. 7 of the HUD Act; 42 U.S.C. 3535(d).

§ 870.1 Purpose.

This part sets forth requirements concerning requests by public housing agencies (PHAs) for HUD authority to demolish buildings or dispose of real property of PHA-owned, low-income public housing projects.

§ 870.2 Applicability.

This part applies to PHA-owned, low-income public housing projects which are subject to Annual Contributions Contracts (ACCs) under the United States Housing Act of 1937. It does not apply to the Section 23 and Section 10(c) Leased Housing Programs or the Section 23 and Section 8 Housing Assistance Payments Programs; nor does it apply to the sale of dwellings to homebuyers pursuant to and in accordance with the rules and procedures for any HUD homeownership opportunities program.

§ 870.3 Definitions.

"Demolition" means the razing of one or more buildings of a public housing project, or the razing of a part of a building comprised of one or more dwelling units and/or nondwelling space.

"Disposition" means the conveyance by a PHA, pursuant to sale or other transaction, of any interest in the real estate of a public housing project (e.g., fee title, leasehold, right of way or easement) and the improvements located thereon, except for leasehold interests incident to the normal operation of the project for low-income housing and related purposes, as permitted by the ACC.

§ 870.4 HUD policy.

It is HUD's policy to conserve and maintain the existing stock of low-income public housing to the maximum extent consistent with considerations of need and feasibility. Unless it can be demonstrated that a project, or a portion of a project, is excess to local needs for low-income housing, every reasonable effort will be made by HUD and the PHA to keep the property within the low-income housing inventory. If a project, or a portion of a project, is determined by HUD as not excess to local needs, but it is unsuitable for housing use because of its physical condition, every reasonable effort shall be made to return it to a condition suitable for housing use, through the Modernization Program or other means. Accordingly, HUD will limit approval for demolition or disposition to those cases where such action can be fully justified in accordance with the criteria set forth under this part.

§ 870.5 PHA request for HUD approval.

Written approval by the Assistant Secretary for Housing shall be required prior to any transaction involving either demolition or disposition or both. To obtain such approval, the PHA shall submit a written request to the appropriate HUD field office. The request shall include a description of the property involved, a statement of the proposed PHA action and additional supporting documentation pertinent to the criteria prescribed in § 870.6 and other applicable requirements. If demolition or disposition of any occupied dwelling is proposed, the PHA shall also submit a plan for relocating displaced tenants to other decent, safe and sanitary housing within the tenants' means. The relocation plan shall provide for the PHA to pay the actual reasonable moving expenses of displaced tenants.

§ 870.6 Criteria.

a. *Primary criteria.* HUD will rely primarily upon the following criteria in determining whether a PHA's request for demolition and/or disposition is justified under the policy stated in § 870.4:

(1) Current and projected needs for low-income housing in the jurisdiction served by the PHA, taking into account

both demand and supply factors. If there is a local need for low-income housing, the PHA's request for demolition or disposition of dwelling units shall include a plan for replacement housing on a one-to-one basis or as approved by HUD to be warranted by current and projected needs for low-income housing, subject to HUD's finding as to the availability of funds.

(2) The physical condition of the property and, where pertinent, the feasibility of rehabilitation. Rehabilitation shall be considered feasible if its estimated cost does not exceed the published prototype cost limit for similar structures in the same prototype cost area.

b. *Secondary criteria.* In addition to the primary criteria for determining whether demolition and/or disposition is justified, HUD will consider the following additional factors:

(1) Location, in terms of any conditions in the surrounding neighborhood that adversely affect the life, health or safety of project residents.

(2) Social conditions which have seriously affected the marketability of the project.

(3) The project's density, in terms of population density and needs for open space for recreation, parking or other purposes, which have seriously affected the marketability of the project.

(4) Benefits to the project or the public interest from disposition of a limited interest in project real estate (e.g., easement, right of way or dedication for public use).

(5) Views of tenants and the local governing body.

§ 870.7 Tenant participation.

a. Before submission to the appropriate HUD field office of a request for demolition and/or disposition, the PHA shall provide written notification to the tenants of the project and the tenant organization, if any, of the proposed request, and afford them a reasonable time to submit comments, including suggested alternatives, concerning the proposed action of the PHA. The PHA shall give full and serious consideration to the comments submitted by the tenants. The PHA shall provide HUD with copies of all written comments and alternatives submitted to the PHA by, or on behalf of, tenants and/or the tenant organization as well as the PHA's position concerning each comment and alternative.

b. When the PHA submits the request to the appropriate HUD field office, it shall notify the tenants of the project and the tenant organization, if any, that the submission has been made and that a copy of the request, including supporting documentation, is available for their review.

c. After HUD's decision on the PHA's request, the PHA shall notify the tenants of the project and the tenant organization, if any, of the decision.

§ 870.8 Environmental and historic preservation requirements.

HUD approval of a PHA's request for demolition and/or disposition shall be subject to applicable requirements of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966.

§ 870.9 A-95 clearance.

With respect to any request for demolition or disposition of 50 or more dwelling units in urbanized areas, as defined by the U.S. Bureau of the Census, or 25 or more dwelling units in all other areas, the following requirements are applicable: (a) At least 45 days prior to the submission of the PHA's request to HUD, the PHA shall transmit a copy of the request to the appropirate State and areawide A-95 clearinghouses for comment.

(b) The PHA shall transmit all clearinghouse comments with the request to HUD. If comments are not received by the PHA within the 45-day period, the PHA shall submit a statement indicating that the clearinghouse(s) was notified and no comments were received.

(c) If the A-95 review comments contain any finding of inconsistency with State, areawide or local plans or non-compliance with environmental or other applicable requirements, the PHA must indicate how it proposes to resolve the finding or provide justification for proposing to proceed with the requested action despite the finding.

§ 870.10 Disposition of excess property.

Where HUD approves the disposition of real property of a project, the PHA shall, in accordance with the requirements of the ACC, determine such property to be excess and shall sell it as soon as practicable at a public sale for not less than the fair market value thereof, unless another method of disposition is approved by HUD. The proceeds of sale or other disposition shall be applied as directed by HUD in accordance with the ACC.

Issued at Washington, D.C., November 1, 1979.

Marilyn Melkonian,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 79-34647 Filed 11-8-79; 8:45 am]

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Friday
November 9, 1979

Part VIII

Department of Commerce

National Oceanic and Atmospheric Administration

Atlantic Surf Clam and Ocean Quahog Fisheries, Approval and Partial Disapproval of Fishery Management Plan Amendments: Proposed Rulemaking

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries; Approval and Partial Disapproval of Fishery Management Plan Amendments: Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration-Commerce.

ACTION: Approval and Partial Disaproval of Fishery Management Plan Amendments; Proposed Rulemaking.[1]

SUMMARY: Several amendments to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) are approved by the Assistant Administrator for Fisheries. Two proposed amendments are partially disapproved. Regulations to implement the approved amendments are proposed for public review and comment.

The amendments extend the FMP now in effect for two years by establishing optimum yield and quotas for 1980 and 1981, with an increase in each year of the optimum yield (OY) for ocean quahogs. The amendments also provide for a make-up day for surf clam fishing time lost to bad winter weather, establish a separate management area and management measures for the New England fishery and close two areas to fishing for surf clams and ocean quahogs The two management measures which have not been approved are proposals which would have: (1) Established a 4½ inch minimum landing size for surf clams; and (2) required that those vessels eligible for a surf clam permit apply for it by February 15, 1980, and land a minimum amount of surf clams by April 15, 1980.

Because part 652 has been amended on a number of occasions in the past, and a clearer, more understandable format for regulations implementing fishery management plans had been developed, Part 652 has been revised to nclude the past amendments and to conform to the new format.

DATES: Comments are invited until December 29, 1979. Comments on this proposed rulemaking will be considered when National Marine Fisheries Service (NMFS) prepares final regulations implementing the amendments. NMFS expects final regulations would become effective January 1, 1980.

ADDRESS: Send comments to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Washington, D.C. 20235. Mark "Surf Clam Comments" on the outside of the evelope.

FOR FURTHER INFORMATION CONTACT: Allen E. Peterson Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930. Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: On November 17, 1977, emergency regulations were published in the Federal Register implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries under the authority of the Fishery Conservation and Management Act of 1976 (16 U.S.C. section 1801 *et seq.*) (the FCMA). Final regulations were promulgated on February 17, 1978. On September 27, 1979, regulations were published implementing Amendment #1 to the FMP. The purpose of Amendment #1 was merely to extend the FMP. The amendment contained in this document (Amendment #2 to the FMP) includes several specific management measures.

In preparing these amendments, the Mid-Atlantic Fishery Management Council (the Council) addressed a number of continuing problems while retaining the basic management framework established by the FMP. The continuing controversy over imposition of the vessel moratorium in the underveloped New England fishery had to be resolved. The growth of the ocean quahog industry caused concern that OY might be reached, forcing closure and hampering development of the fishery while the biological evidence supported greater harvest levels. Fishermen from every area and vessel class expressed a need to provide for a make-up day for surf clam fishing periods lost to bad winter weather, so that they would no longer have to go perhaps weeks without making a trip, or be forced to fish in bad weather to earn enough money to subsist and meet boat payments. The Council also was concerned about the threat of harvest of large numbers of surf clams under 4½ inches in length. The Council's deep concern over the effects of pollution on the marine environment was reflected in a proposal to close two areas to the harvest of surf clams and ocean quahogs. A deadline on permit applications and active entry into the surf clam fishery was proposed.

Since fishing for surf clams has been conducted for years on a small in New England inshore waters, New England interests felt the moratorium in their area was not justifiable because it would restrict exploration and development of the resource in those waters.

Therefore, a separate management area is proposed for New England's fishery with a separate surf clam OY and a relaxation of the effort (fishing time) and entry (moratorium) restrictions.

The proposed OY for surf clams for that area of 25,000 bushels (425 thousand pounds) will allow for exploration and development of the fishery, which in turn will generate data and facilitate more accurate assessment of the abundance of the resource. No vessel will be denied access to the New England fishery. However, vessels which enter that fishery will not be allowed to fish in the mid-Atlantic area unless they meet the eligibility requirements under the moratorium and obtain a permit. Fishing time in the New England fishery will not be restricted unless half of the surf clam quota has been taken and it appears that continued unrestricted fishing will result in exeeding the quota. The management areas are separated by the line of jurisdiction of the two Councils, which passes near Block Island at roughly a 37 degree angle southeastward.

In this amendment, the Council has recommended that the annual OY for surf clams remain unchanged at 1,800,000 bushels (or 30 million pounds) while a separate annual OY of 25,000 bushels (or 425 thousand pounds) for the New England area would be established in addition to the annual OY for the mid-Atlantic area.

Increases in fishing capacity and market potential based on supportive stock assessment information, led the Council to recommend a gradual increase in OY for ocean quahogs to promote rational development of the fishery. The OY would increase to 3,500,000 bushels (or 35 million pounds) in 1980 and to 4,000,000 bushels (or 40 million pounds) in 1981.

The original FMP attempted to address the variable fishing ability of the fleet by distributing the annual surf clam quota differentially over the four calendar quarters. In the bad winter weather months of January-March and October-December the quarterly quota was set at 350,000 bushels (or 5.95 million pounds) because fewer vessels were expected to be able to work. During the good weather months of April-June and July-September, the quarterly quota was set at 550,000 bushels (or 9.35 million pounds) to allow smaller vessels a better fishing opportunity during that time of the year when more favorable weather can be expected.

After the first winter months during which the fleet was restricted to 24 hours of fishing time per week, it

[1] The Fishery Management Plan will be published a subsequent issue of the Federal Register.

became apparent that the combination of little fishing time and no flexibility in its use could, in bad winter weather, deprive many vessels of any fishing opportunity for days or weeks at a time, causing financial hardship. The Council also was concerned that a captain might be forced by financial pressure to fish in dangerous weather. After a great deal of discussion, a solution evolved to provide for a make-up day on the day immediately following the lost fishing day. If a vessel is unable to fish and certain criteria for weather severity are met, then a make-up day can be claimed. To allow for a simple, understandable and enforceable implementation of the concept, two zones have been established centered around the key ports of Wildwood-Cape May, NJ, (New Jersey and North) and Chincoteague, VA, (Delmarva and South). Vessels may claim make-up day during the months of December through March if small craft warnings were posted at the key port of the zone they are fishing from. The make-up day can be claimed and verified through the Coast Guard or NMFS law enforcement office in or nearest the key port. A vessel must claim the make-up day, on the day immediately following the lost fishing day, before the start of the regular fishing period for the "lost" day.

Because the make-up day will change catch patterns over the year, the surf clam allocations for the first and fourth quarters are raised from 350,000 to 400,000 bushels each, while the allocations for the second and third quarters are lowered from 550,000 to 500,000 bushels each.

The moratorium on new entry into the surf clam fishery was imposed both to restrict increases in fishing capacity and to preserve the social and economic structure of the harvesting sector to the extent possible during application of a restrictive surf clam resource rebuilding program. The same conditions which initially led to the application of the moratorium prevail today in the mid-Atlantic Area. It has been calculated that only about one-fifth of the fleet's harvesting capacity was utilized during 1978.

Serious concern has been expressed over the continuing imposition of a moratorium. Specifically, some New England and mid-Atlantic interest oppose the concept of restricted entry because they feel it limits competition and creates a privileged class of users. Some small processors who own no vessels have asked that they be allowed to build or buy vessels to assure themselves a supply of raw materials if their regular suppliers leave them.

Despite these concerns, it has not been possible to develop an alternative acceptable to the industry. A proposal to initiate a year of record from which future vessel allocations might be derived was vigorously opposed by virtually every sector of the industry. Replacement of the moratorium is the highest priority for a future amendment. However, there is widespread recognition that some form of entry limitation is needed to prevent chaos within the industry, and that it will take time to devise, discuss, and implement an acceptable alternative.

The Council proposed a minimum landing size for surf clams to help maximize the yield per clam harvested, to assure a diverse and robust spawning population, and to standardize an accepted practice within industry of avoiding the harvest or use of small clams. While the merit of the proposed 4½ inch minimum landing size is not questioned by NMFS, implementation as proposed by the Council is not practical, because of the unique problems presented by handling large quantities of surf clams. NMFS is protecting small clams by closing beds where they occur under existing FMP provisions.

The Council's concern over the effects of pollution of the marine environment was expressed in a proposal to close two offshore disposal sites to fishing. This is incorporated as a new provision in the proposed regulations in § 652.23.

When the moratorium on new entry into the surf clam fishery was adopted nearly two years ago, the interests of those with an investment, involvement or commitment to vessel construction were protected in the standards for permit eligibility. Concern is now being expressed that a number of vessels which were under construction or rerigging at that time have not yet entered the fishery, and that their continuing eligibility might encourage speculation in their permits and inhibit the development of new management concepts such as vessel allocations or stock certificates. Consequently, the Council, proposed that any vessel eligible for a permit must apply for it no later than February 15, 1980, and then demonstrate involvement in the fishery by landing 500 bushels of surf clams by April 15, 1980.

The merit of that proposal is recognized; however, implementation would impose different landing requirements on vessels which have not yet entered the fishery from those imposed on vessels which have obtained licenses but may have been only marginally active. For this reason, the proposal was not adopted.

A series of public hearings was held in New Bedford, MA; Galilee, RI; Pomona, NJ; Cape May, NJ; Ocean City, MD; and Norfolk, VA., concerning the Council's amendments. The Council considered the comments received and made significant revisions to the amendments reflecting those comments.

These amendments to the Atlantic Surf Clam and Ocean Quahog FMP were approved by the Assistant Administrator under section 304(a) of the FCMA. The present FMP and implementing regulations will expire at the end of the current year. In order to prevent over fishing in addition to other possible adverse environmental impacts to the surf clam and ocean quahog fisheries, the 60-day comment period normally provided on significant regulations under Executive Order 12044 has been shortened to 45 days. The following amendment to the FMP, and the supplemental environmental impact statement, describe the development and rationale for the approved amendments.

Note.—The implementation of these amendments by the Assistant Administrator for fisheries constitutes a major federal action affecting the quality of the human environment. A regulatory analysis has been prepared for this action under E.O. 12044. Persons wishing to inspect the regulatory analysis should contact the Regional Director (see "ADDRESSES" above).

Signed at Washington, D.C., this 7th day of November 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

It is proposed to revise 50 CFR Part 652 to read as follows:

Subpart A—General Provisions

Sec.
652.1–652.10 [Reserved]
652.11 Purpose.
652.12 Definitions.
652.13 Foreign fishing.
652.14 Prohibitions.
652.15 Penalties.
652.16 Vessel permits.
652.17 Vessel identification.
652.18 Facilitation of enforcement.
652.19 Reports and records.

Subpart B—Management Measures

652.21 Catch quotas.
652.22 Effort restrictions.
652.23 Closed areas.
652.24 Vessel moratorium.

Authority.—16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§§ 652.1—652.10 [Reserved]

§ 652.11 Purpose.

This Part regulates fishing for surf clams (*Spisula solidissima*) and ocean quahogs (*Arctica islandica*) in the

Atlantic Ocean Fishery Conservation Zone (FCZ) from January 1, 1980 to December 31, 1981.

§ 652.12 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this Part 652 shall have the following meaning (some definitions in the Act have been repeated here to aid fishermen in understanding the regulations).

(a) *Act* means the Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1801 *et seq.*, as amended.

(b) *Assistant Administrator* means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

(c) *Authorized officer* means:

(1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified enforcement or Special Agent of the NMFS;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

(d) *Bushel* means a standard unit of measure presumed to hold 1.88 cubic feet of surf clams or ocean quahogs in the shell.

(e) *Cage* means a standard unit of measure presumed to hold 32 bushels of surf clams or ocean quahogs in the shell. The outside dimensions of a standard cage generally are 3' wide, 4' long and 5' high.

(f) *Directed fishery* means, with respect to any species, a fishery conducted for the purpose of catching that species.

(g) *Fish* means any finfish, mollusks including surf clams and ocean quahogs), crustaceans, and all other forms of marine aminal and plant life other than marine mammals, birds, and highly migratory species.

(h) *Fishery Conservation Zone (FCZ)* means the zone contiguous to the territorial sea of the U.S., the inner boundary of which is a line coterminous with the seaward boundary of each of the coastal States and the outer boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

(i) *Fishing* means:

(1) The catching, taking or harvesting of fish;

(2) The attempted catching, taking or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2) or (3) of this definition.

The term "fishing" does not include any scientific research activity which is conducted by any scientific research vessel.

(j) *Fishing trip* means a departure from port, transmit to the fishing grounds, fishing, and discharge of any part of the catch on board.

(k) *Fishing vessel* means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing.

(l) *Mid-Atlantic Area* means that portion of the FCZ south of the line that begins at 41°18'16.249" North latitude and 71°54'28.477" West longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ.

(m) *New England Area* means that portion of the FCZ north of the line that begins at 41°18'16.249" North latitude and 71°54'28.477" West longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ.

(n) *NMFS* means the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration.

(o) *Operator* means, with respect to any vessel, the master or other individual on board and in charge of that vessel.

(p) *Owner* means, with respect to any vessel: (1) any person who owns that vessel in whole or in part; (2) any charterer of the vessel, whether bareboat, time, or voyage; or (3) any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

(q) *Person* means any individual, corporation, partnership, association, or other entity.

(r) *Regional Director* means the Regional Director, Northeast Region, NMFS, Federal Building, 14 Elm Street, Gloucester, MA 01930. Telephone 617-281-3600.

(s) *Secretary* means the Secretary of Commerce or the designee of the Secretary.

(t) *Vessel of the United States* means:

(1) A vessel documented or numbered by the Coast Guard under U.S. law; or

(2) A vessel, under five net tons, which is registered under the laws of any State.

§ 652.13 Foreign fishing.

Fishing for surf clams or ocean quahogs in the FCZ by any vessel other than a vessel of the United States is prohibited.

§ 652.14 Prohibitions.

(a) No person shall catch and retain on board any surf clams or ocean quahogs:

(1) during closed seasons; or

(2) in closed areas as specified in these regulations; or

(3) on days of the week on which fishing for these species is not permitted.

(b) No person shall fish for surf clams except during the authorized time period(s) assigned to the vessel he is operating.

(c) No person shall catch and retain on board any surf clams on other than an authorized surf clam fishing trip.

(d) No person shall possess, have custody of or control of, ship, transport, offer for sale, deliver for sale, sell, purchase, import, export, or land, any surf clams, ocean quahogs, or parts thereof, which were taken in violation of the Act, these regulations, or any other regulations issued under the Act.

(e) No person engaged in the surf clam or ocean quahog fisheries as an owner or operator, or as a dealer, processor, buyer or receiver shall unload or cause to be unloaded, or sell or buy, any surf clams or ocean quahogs whether on land or at sea, without preparing and submitting the documents required by section 652.19.

(f) No person shall:

(1) refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection, no matter where that vessel may be located, in connection with the enforcement of the Act, these regulations, or any other regulations issued under the Act;

(2) forcibly assault, resist, oppose, impede, intimidate or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (f)(1) of this section;

(3) resist a lawful arrest for any act prohibited by these regulations; or

(4) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by these regulations.

(g) No person shall use any fishing vessel to engage in fishing without a permit, or after the revocation, or during the period of suspension, of an applicable permit issued under § 652.16.

(h) No person shall alter, erase or mutilate: (1) any permit issued under § 652.16; or (2) any letter of authorization issued under § 652.22.

(i) No person shall violate any other provision of the Act, these regulations, or any applicable permit issued under § 652.16.

§ 652.15 Penalties.

(a) Any person or fishing vessel found to be in violation of these regulations, including the logbook and other reporting requirements, shall be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, in 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and in other applicable law.

(b) The Assistant Administrator may revoke, modify, or suspend the permit of a vessel whose owner or operator violates any provision of the Act, these regulations, or any applicable permit.

§ 652.16 Vessel permits.

(a) *General.* A vessel owner or operator must obtain a permit in order to:

(1) conduct a directed fishery for surf clams or ocean quahogs within the FCZ, or

(2) land or transfer to another vessel any surf clams or ocean quahogs or part thereof caught within the FCZ.

(b) *Eligibility.* (1) *Surf clams—New England and Mid-Atlantic.* A vessel is eligible for a surf clam permit permitting harvest of surf clams in both the New England and Mid-Atlantic Areas if it meets any of the following criteria:

(i) The vessel has landed surf clams in the course of conducting a directed fishery for surf clams between November 18, 1976, and November 17, 1977; or

(ii) The vessel was under construction for, or was being re-rigged for, use in the directed fishery for surf clams on November 17, 1977. For the purpose of this paragraph (b)(1)(ii), "under construction" means that the keel had been laid, and "being re-rigged" means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for surf clams.

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity which involuntarily left the surf clam fishery during the moratorium, and both the entering and replaced vessels are owned by the same person.

(2) *Surf clams—New England only.* Any vessel of the United States is eligible for a permit allowing it to harvest surf clams in the New England Area only.

(3) *Ocean quahogs.* Any vessel of the United States is eligible for a permit allowing it to harvest ocean quahogs only.

(c) *Application.* Permit applications may be obtained by contacting the Regional Director. The owner or operator may apply for a permit by submitting an application form supplied by the Regional Director containing the following information:

(1) Names, mailing addresses, and telephone numbers of the owner and operator;

(2) The name of the vessel;

(3) The vessel's United States Coast Guard documentation number or State license number;

(4) Engine and pump horsepower;

(5) Homeport of the vessel;

(6) Directed fishery or fisheries;

(7) Fish hold capacity (in "cages" or bushels);

(8) Dredge size and number of dredges;

(9) Amount of surf clams and ocean quahogs landed between November 18, 1976 and November 17, 1977 (in bushels, if applicable);

(10) Number of fishing trips between November 18, 1976 and November 17, 1977;

(11) Date of beginning of construction or re-rigging (if applicable);

(12) Signature of the owner or operator; and

(13) Any other information which may be necessary for the issuance or administration of the permit.

(d) *Issuance.* The Regional Director shall issue a permit to each eligible vessel for which an application is submitted. The eligibility of a vessel to fish for surf clams will be determined consistent with this section. There will be no fee for the initial permit. A lost or mutilated permit will be replaced at a cost of $25.

(e) *Appeal of denial of permit.* (1) Any applicant denied a permit by the Regional Director may appeal to the Assistant Administrator for review of the denial. Any such appeal must be in writing. Any of the following grounds may form the basis for review:

(i) applicant believes denial was in error;

(ii) applicant was prevented by circumstances beyond his control from meeting relevant criteria;

(iii) applicant has new or additional information which might change the initial decision; or

(iv) applicant can show that significant and unusual hardship will result from the denial.

(2) The appeal may be presented, at the option of the applicant, at a hearing before a person appointed by the Assistant Administrator to hear the appeal.

(3) The decision of the Assistant Administrator shall be the final decision of the Department of Commerce.

(f) *Transfer.* A permit is valid only for the vessel for which it is issued.

(g) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit, the vessel, its gear and catch shall be subject to inspection upon request of any authorized officer.

(h) *Expiration.* Except as provided in subparagraph (h)(2), a permit shall expire:

(1) When the owner or operator retires the vessel from the fishery (it shall be a rebuttable presumption that failure to land any surf clams or ocean quahogs for 52 consecutive weeks constitutes retirement from the fishery) or

(2) When the ownership of the vessel changes; however, the Regional Director may authorize continuation of a vessel permit for the surf clam fishery, if he determines that expiration of the vessel permit would cause substantial economic hardship to a person who had participated in the surf clam fishery for at least one year immediately prior to November 17, 1977. Petitions for continuation of a permit must be addressed to the Regional Director and contain sufficient evidence to support the claim of economic hardship.

(i) *Expirations.* Subpart D of 50 CFR Part 621 (Civil Procedures) shall govern the imposition of permit sanctions against a permit issued under this Part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of an offense prohibited by the Act or these regulations; or if a civil penalty or criminal fine imposed under the Act, and pertaining to a permitted vessel, is not paid.

§ 652.17 Vessel identification.

(a) *Official number.* Each fishing vessel 25 feet in length or longer subject to these regulations shall display its

official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. Vessels under 25 feet in length do not need to display any number. The official number is the documentation number issued by the U.S. Coast Guard or the certificate of number issued by a State or the Coast Guard for undocumented vessels.

(b) *Markings.* Markings shall be at least eighteen (18) inches in height, legible, and of a color that contrasts with the background.

(c) *Duties of the operator.* The operator of each vessel shall:

(1) keep the required identifying markings clearly legible and in good repair; and

(2) ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) *New Jersey vessels.* Instead of complying with paragraphs (a) and (b) of this section, vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that State.

§ 652.18 Facilitation of enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by any authorized officer to facilitate safe boarding and inspection of the vessel, its gear, logbook and catch for purposes of enforcing the Act and these regulations.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for signals conveying enforement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly";

(2) "SQ3" meaning "You should stop or heave to; I am going to board you";

(3) "AA AA AA etc." which is the call to an unknown station; to which the signalled vessel should respond by illuminating the vessel identification required by § 652.17;

(c) *Boarding.* A vessel signalled to stop or heave to for boarding shall:

(1) stop immediately and lay to or maneuver in such a way as to permit the authorized officer and his party to come aboard;

(2) provide a safe ladder for the authorized officer and his party;

(3) when necessary to facilitate the boarding; provide a man rope, safety line and illumination for the ladder; and

(4) take such other actions as necessary to ensure the safety of the authorized officer and his party and to facilitate the boarding.

§ 652.19 Reports and records.

(a) *Dealers.* (1) *Weekly report.* Any person who buys surf clams and ocean quahogs from a fishing vessel subject to these regulations shall provide at least the following information to the Regional Director on a weekly basis, on forms supplied by the Regional Director:

(i) Dates of purchases;

(ii) Number of bushels purchased by species;

(iii) Name and permit number of the vessel from which surf clams or ocean quahogs are landed or received;

(iv) Price per bushel, by species;

(v) Mailing address of dealer or processing plant; and

(vi) Meat yield per bushel by species.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section shall also provide the following information to the Regional Director on an annual basis, on forms supplied by the Regional Director:

(i) Number of dealer or processing plant employees during each month of the year just ended;

(ii) Number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended;

(iii) Total payroll of those employees in paragraph (a)(2)(ii) of this section during each month of the year just ended;

(iv) Plant capacity to process surf clams and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; and

(v) An estimate, for the next year, of the capacities described in paragraph (a)(2)(iv) of this section.

If the capacities described in paragraph (a)(2)(iv) of this section increase or decrease more than ten percent during any year, the processor shall promptly notify the Regional Director of the change in capacity.

(3) *At-sea activities.* All persons purchasing, receiving, or processing surf clams or ocean quahogs at sea for transport to any port of the United States must maintain records identical to those required by paragraphs (a)(1) and (2) of this section and provide those records to the Regional Director on the same frequency basis.

(b) *Owners and operators.* (1) *Daily fishing log.* The owner or operator of any vessel conducting any fishing operations subject to these regulations shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director showing at least:

(i) Name and permit number of the vessel;

(ii) Total amount in bushels of each species taken;

(iii) Date(s) caught;

(iv) Time at sea;

(v) Duration of fishing time;

(vi) Locality fished;

(vii) Crew size;

(viii) Crew share by percentage;

(ix) Landing port;

(x) Date sold;

(xi) Price per bushel; and

(xii) Buyer.

(2) *When to fill in log.* To the extent possible, owners or operators shall fill in such logbooks before landing any surf clams or ocean quahogs at the end of any fishing trip. In any event, all logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized official at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the log, the owner or operator shall keep each logbook at the owner or operator's principal place of business.

(5) *Weekly reports.* The owner or operator shall submit weekly reports to the Regional Director, on forms supplied by the Regional Director. In the event that no fishing trip is made during a week, a report so stating must be submitted.

(6) *Annual reports.* All persons required to submit reports under paragraph (b)(1) of this section shall submit annually to the Regional Director, on forms supplied by the Regional Director, at least the following information relating to vessel characteristics: name of vessel, vessel's U.S. Coast Guard documentation number or State license number, engine and pump horsepower, homeport of vessel, hold capacity (in bushels or cages), and dredge size and number of dredges.

Subpart B—Management Measures

§ 652.21 Catch quotas.

(a) *Surf clams: Mid-Atlantic Area.* The amount of surf clams which may be caught in the mid-Atlantic area by

fishing vessels subject to these regulations is, for the applicable quarter:

	Bushels
January 1 to March 31	400,000
April 1 to June 30	500,000
July 1 to September 30	500,000
October 1 to December 31	400,000
Annual quota	1,800,000

(1) *Adjustments.* If the actual catch of surf clams in the Mid-Atlantic Area in any quarter falls more than 5,000 bushels short of the specified quarterly quota, the Regional Director shall add the amount of the shortfall to the next succeeding quarterly quota. If the actual catch of surf clams in any quarter exceeds the specified quarterly quota, the Regional Director shall subtract the amount of the excess from the next succeeding quarterly quota.

(2) *Notice.* The Assistant Administrator shall publish a notice in the Federal Register whenever the Regional Director adjusts the quarterly quota of surf clams under paragraph (a)(1) of this section.

(b) *Surf clams: New England Area.* The amount of surf clams which may be caught in the New England Area by fishing vessels subject to these regulations is, for each year, 25,000 bushels.

(c) *Ocean Quahogs.* The annual quota for ocean quahogs is 3,500,000 bushels for 1980 and 4,000,000 bushels for 1981. If necessary, the Regional Director may establish quarterly quotas for ocean quahogs. In that event, the Assistant Administrator shall publish notice of such quarterly quota in the Federal Register. In the event that the Regional Director establishes quarterly quotas for ocean quahogs, if the actual catch of ocean quahogs fall more than 5,000 bushels short of the specified quarterly quota, the Regional Director shall add the amount of the shortfall to the next succeeding quarterly quota. If the actual catch of ocean quahogs in any quarter exceeds the specified quarterly quota, the Regional Director shall subtract the amount of the excess from the next succeeding quarterly quota.

(d) *Closure.* If the Regional Director determines (based on logbook reports, processor reports, vessel inspections, or other information) that the quota for surf clams or ocean quahogs for any time period indicated in § 652.21 will be exceeded, the Assistant Administrator shall publish a notice in the Federal Register stating the determination and, if necessary, stating a date and time for closure of the surf clam or ocean quahog fishery for the remainder of the time period. The Regional Director shall send notice of the action, by certified mail, to each surf clam or ocean quahog processor and to each surf clam or ocean quahog vessel owner or operator.

(e) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel and the presence of any part of the vessel's gear in the water more than 12 hours after a fishery closure announcement becomes effective under paragraph (d) of this section shall be prima facie evidence that such clams or quahogs were taken violation of these regulations.

§ 652.22 Effort restrictions.

(a) *Surf clams. Mid-Atlantic Area.* (1) Fishing for surf clams shall be permitted only during the period beginning 5:00 PM Sunday and ending 5:00 PM Thursday.

(2) The Regional Director will notify each owner or operator of a fishing vessel engaged in the surf clam fishery in the Mid-Atlantic area concerning the allowable combinations of fishing periods for varying levels of allowable weekly fishing tme. The vessel owner or operator shall send the Regional Director written notice of his selection of allowable surf clam fishing periods for that vessel. All selections must be received by the Regional Director not later than 15 days before the beginning of the quarter for which the selection is to be effective. The Regional Director will send a letter of authorization to each owner or operator, stating the periods during which the vessel is authorized to fish for surf clams. The letter of authorization shall be kept aboard the vessel at all times. Fishing shall be conducted only during the times and under those conditions authorized by the Regional Director on the letter of authorization. Requests for changes in a vessel's authorized fishing periods will not be considered once a quarter has commenced. All requests for changes in authorized fishing periods for a subsequent quarter must be received by the Regional Director 15 days prior to the beginning of that quarter. Fishing for any part of an authorized period will be counted as one day of fishing. In this paragraph, "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as travelling to or from the fishing grounds. Presence of a vessel's fishing gear in the water at a time which is more than one-half hour before the beginning, or one-half hour after the end, of the vessel's authorized fishing period shall be prima facie evidence that the vessel is fishing in violation of these regulations.

(3) Each quarter will begin with each vessel limited to 24 hours of fishing time, to allow fishing for surf clams to be conducted throughout the entire quarter without exceeding the allocation for that quarter (as adjusted under § 652.21(a)(1)). All authorized fishing periods will end at 5:00 PM.

(4) If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly allocations of surf clams (as adjusted under § 652.21 will be exceeded, the number of hours per week during which fishing for surf clams is permitted may be reduced to avoid prolonged closure of the fishery.

(5) If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly allocation of surf clams (as adjusted under § 652.21(a)(1)) will not be harvested, and that the catch rate has not diminished as a result of a decline in abundance of stocks of surf clams, he may increase the number of hours per week during which fishing for surf clams is permitted to facilitate the harvest of the full quarterly allocation.

(6) The Assistant Administrator shall publish a notice in the Federal Register of any reduction or increase in hours per week during which fishing for surf clams is permitted. The reduction or increase may take effect immediately upon publication in the Federal Register. The Regional Director shall also send notice of the change of each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

(7) During the months of December, January, February, and March, fishermen may claim a make-up period if small craft warnings are posted in the "key port" of the area from which the vessel fishes. Vessels fishing from ports in New Jersey and northward are in Zone 1. The "key port" of Zone 1 is Wildwood—Cape May, New Jersey. Vessels fishing from ports on the Delmarva Peninsula and southward are in Zone 2. The "key port" for Zone 2 is Chincoteague, Virginia.

If small craft warnings are posted in the key port of the zone from which the vessel fishes, within four hours before the vessel's scheduled authorized fishing period is to start then the vessel may elect not to fish during the scheduled authorized fishing period and may instead claim a make-up period.

To claim the make-up period, the vessel owner must contact the Coast Guard or NMFS law enforcement office in or nearest the key port *before* the scheduled authorized fishing period starts.

The make-up period shall be equal in length to the scheduled authorized

fishing period, and shall begin 24 hours after the scheduled beginning of said period, except that if the make-up period could not then be completed before the end of the fishing week on Thursday at 5 p.m., then the make-up period shall begin 96 hours after the beginning of the scheduled authorized fishing period.

Before using this make-up day provision, each vessel owner must notify the Regional Director, in writing, of the port from which the vessel fishes. If that port changes, the vessel owner shall promptly notify the Regional Director of the change, in writing.

Any vessel which uses a make-up period without claiming it under this procedure, or which fishes during a scheduled authorized fishing period for which it has claimed a make-up period, shall be liable to forfeit its use of the make-up provision in the future; the vessel and its owner or operator also may be subject to other penalties as prescribed in § 652.15 of these regulations.

(8) *Presumption.* The presence of surf clams aboard any fishing vessel engaged in the surf clam fishery, more than 12 hours after a weekly closure occurs under this paragraph (a), shall be prima facie evidence that such surf clams were taken in violation of these regulations.

(b) *Surf clams. New England Area.* (1) Fishing for surf clams shall be permitted seven days per week.

(2) When 50 percent of the quota of surf clams indicated in § 652.21(b) has been caught, the Regional Director shall, on review of the available information and public comment, determine whether the total catch of surf clams during the remainder of the year will exceed the annual quota. If the Regional Director determines that the quota probably will be exceeded, the number of days per week, or establish authorized periods, during which fishing for surf clams is permitted may be reduced.

(3) The Assistant Administrator shall publish a notice in the Federal Register of any reduction in days per week during which fishing for surf clams is permitted. The reduction may be effective immediately upon publication in the Federal Register. The Regional Director shall also send notice of any reduction to each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

(c) *Ocean Quahogs.* (1) Fishing for ocean quahogs shall be permitted seven days per week.

(2) When 50 percent of the quota of ocean quahogs of any time period indicated in § 652.21(c) has been caught, the Regional Director shall, on review of the available information and public comment, determine whether the total catch of ocean quahogs during the applicable time period will exceed the quota for that time period. If the Regional Director determines that the quota will be exceeded, the number of days per week during which fishing for ocean quahogs is permitted.

(3) The Assistant Administrator shall publish a notice in the Federal Register of any reduction in days per week during which fishing for ocean quahogs is permitted. The reduction may be effective immediately upon publication in the Federal Register. The Regional Director shall also send notice of any reduction to each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

§ 652.23 Closed areas.

(a) *Areas closed because of environmental degradation.* Two areas have been closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. Such areas will remain closed until the Environmental Protection Agency advises the Assistant Administrator that the adverse environmental conditions have been corrected. The areas are identified as follows:

(1) A sewage disposal site located between 38°20'00" N and 38°25'00" N; and between 74°10'00" W and 74°20'00" W;

(2) A toxic industrial dump site located between 38°40'00" N and 39°00'00" N; and between 72°00'00" W and 72°30'00" W.

(b) *Areas closed because of small surf clams.* Areas may be closed to surf clam and ocean quahog fishing upon a determination by the Regional Director (based on logbook entries, processors' reports, survey cruises, or other information) that the area contains surf clams of which:

(1) 60 percent or more are smaller than 4½ inches in size, and

(2) not more than 15 percent are larger than 5½ inches in size. (Sizes shall be measured at the longest dimension of the surf clam.)

(c) *Notice.* The Assistant Administrator shall publish notice of any closed area in the Federal Register. The Regional Director shall send notice of the closed area, by certified mail, to each surf clam or ocean quahog processor and to each surf clam or ocean quahog vessel owner or operator.

(d) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel engaged in those fisheries or the presence of any part of the vessel's gear in the water, in closed areas shall be prima facie evidence that such clams or quahogs were taken in violation of these regulations.

§ 652.24 Vessel moratorium.

The moratorium that became effective on November 17, 1977, prohibiting the entry of additional vessels into the surf clam fishery, shall remain in effect in the Mid-Atlantic Area until December 31, 1981, unless the Secretary determines, after public hearings and consultation with the Mid-Atlantic, New England and South Atlantic Fishery Management Councils, to terminate the moratorium at an earlier date. The moratorium no longer applies to vessels fishing in the New England Area.

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Federal Register
Vol. 44, No. 219
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202-783-3238	Subscription orders (GPO)
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	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266	Public Law Numbers and Dates, Slip Laws, U.S.
-5282	Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

62879-63076 1
63077-63508 2
63509-64058 5
64059-64396 6
64397-64780 7
64781-65024 8
65025-65378 9

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR
485 64063

3 CFR
Administrative Orders:
Presidential Determinations:
No. 80-1 of October 15, 1979 63077
No. 80-2 of October 23, 1979 64059
No. 80-3 of October 23, 1979 64061
Proclamations:
4698 63509
4699 63511
4700 63513
4701 64781

5 CFR
177 65025
213 ..... 63079, 64064-64067, 65025-65031
293 65031
297 65031
315 63080
351 65046
733 63080
1201 65048
1206 65048
1312 64783
Proposed Rules:
531 65077

6 CFR
705 64276
706 64284

7 CFR
272 64386
273 64067
401 64786
427 62879
429 62879
431 64786
724 63061
907 64838
910 ..... 63081, 65049
959 63082
989 64397
1701 64069
1942 62880
1962 64794
1980 64797
Proposed Rules:
210 63107
235 63107
271 ..... 63496, 65077
272 ..... 63496, 65318
273 63496
274 65318
276 65318
277 65318
278 63496
318 65080
910 64839
982 63547
989 62901
1133 64067
1464 63107

9 CFR
1 63488
2 63488
3 63488
92 63082
113 63083
160 63488
161 63488

10 CFR
0 62880
2 65049
20 63515
21 63515
71 63083
73 63515
211 63515
436 64776
450 ..... 63519, 64797
455 ..... 63519, 64797
456 64602
1023 64270
Proposed Rules:
Ch. II 63108, 64094, 65274
Ch. III 63108, 64094, 65274
Ch. X 63108, 64094, 65274
221 63109
470 64839

11 CFR
107 63036
114 63036
9008 63036
9032 63756
9033 63756
9034 63756
9035 63756
Proposed Rules:
100 64773
110 64773
114 64773
9033 63753

12 CFR
27 63084
225 ..... 64398, 65051
262 64398
264b 64399
265 64398
Proposed Rules:
211 ..... 62902, 62903
561 64840

13 CFR
101 ... 64401

14 CFR
13 ... 63720
39 ... 62881, 62882, 63519-63521, 64797
71 ... 62883, 62884
75 ... 62884
91 ... 62884
97 ... 62885
385 ... 64401
399 ... 65052
Proposed Rules:
Ch. I ... 65104
23 ... 62906
25 ... 62906
39 ... 62907, 63547
71 ... 62908, 63548, 63549, 64840-64842
97 ... 62909
107 ... 63048, 64843
108 ... 63048, 64843
121 ... 63048, 64843
129 ... 63048, 64843
135 ... 62906, 63048, 64843
223 ... 64429
225 ... 64429

16 CFR
3 ... 62887
13 ... 64803
460 ... 64402
Proposed Rules:
13 ... 63114, 63550, 64432, 64434
454 ... 62911

17 CFR
200 ... 64069
210 ... 62888
230 ... 64070
Proposed Rules:
250 ... 62912
259 ... 62912

18 CFR
2 ... 65055
157 ... 65055
271 ... 62889
292 ... 63114

19 CFR
Proposed Rules:
4 ... 64434
144 ... 64434
151 ... 64434
159 ... 64434

20 CFR
416 ... 64402
675 ... 64290, 64326
684 ... 64290
688 ... 64326
Proposed Rules:
208 ... 62912
260 ... 62912, 63096

21 CFR
520 ... 63096
522 ... 63097
1002 ... 65352
1040 ... 65352
Proposed Rules:
145 ... 65080
353 ... 63270
864 ... 64095
868 ... 63292-63426, 65081

22 CFR
506 ... 63098

23 CFR
658 ... 63680
Proposed Rules:
659 ... 63682

24 CFR
201 ... 64072
203 ... 64073
205 ... 64073, 64403
207 ... 64073
213 ... 64073
220 ... 64073
221 ... 64073
232 ... 64073
234 ... 64073
235 ... 64073
236 ... 64073
241 ... 64073
242 ... 64073
244 ... 64073
250 ... 64073
805 ... 64204
841 ... 64405
868 ... 64196
880 ... 65060
882 ... 65061, 65360
Proposed Rules:
208 ... 65081
886 ... 64095

25 CFR
31g ... 65008

26 CFR
1 ... 64405, 65061
5 ... 63522

29 CFR
Proposed Rules:
1601 ... 65082
1904 ... 65082
1910 ... 64095

30 CFR
Proposed Rules:
870 ... 63737
871 ... 63737
872 ... 63737
873 ... 63737
874 ... 63737
875 ... 63737
876 ... 63737
877 ... 63737
878 ... 63737
879 ... 63737
880 ... 63737
881 ... 63737
882 ... 63737
883 ... 63737
884 ... 63737
885 ... 63737
886 ... 63737
887 ... 63737
888 ... 63737

32 CFR
625 ... 63099
881 ... 64075
2600 ... 64077

33 CFR
124 ... 63672
126 ... 63672
160 ... 62891
161 ... 63672
164 ... 63672
183 ... 63523
Proposed Rules:
82 ... 64843

36 CFR
Ch. VI ... 64406
51 ... 62893
60 ... 64405
222 ... 64406
1202 ... 64407, 65066

37 CFR
Proposed Rules:
202 ... 62913

38 CFR
Proposed Rules
21 ... 65083

39 CFR
775 ... 63524

40 CFR
6 ... 64174
51 ... 65066, 65069
52 ... 63102, 65066
53 ... 65066
58 ... 65066, 65069
60 ... 65066
65 ... 63102
80 ... 62897
81 ... 63102, 64078
87 ... 64266
162 ... 63749
409 ... 64078
418 ... 64080
424 ... 64082
434 ... 64082
Proposed Rules:
Ch. I ... 63552
51 ... 65084
52 ... 63114, 64439, 65084
60 ... 62914
85 ... 62915
230 ... 63552
713 ... 64844

41 CFR
14-1 ... 63529
14-7 ... 63529
105-54 ... 65071
105-62 ... 64805
Proposed Rules:
3-1 ... 63115
3-7 ... 63115

42 CFR
50 ... 65072

43 CFR
3100 ... 64085
Proposed Rules:
34 ... 64095

44 CFR
55 ... 64082
64 ... 63529, 64808
65 ... 63530
67 ... 63531-63534, 64421, 65074
205 ... 64809
Proposed Rules:
67 ... 63117-63120, 63553-63557, 64096, 64444, 64451, 64460, 64466, 64472, 065093-65104
205 ... 63058

45 CFR
Proposed Rules:
405 ... 63120
1152 ... 63120
1501 ... 64097
1067 ... 64815
1069 ... 64836

46 CFR
401 ... 64836
402 ... 64836
502 ... 62898
Proposed Rules:
1 ... 64844
61 ... 62915

47 CFR
21 ... 63105
22 ... 63105
73 ... 64408
83 ... 64409
87 ... 64409
Proposed Rules:
31 ... 64440
33 ... 64440
42 ... 64440
43 ... 64440
64 ... 63558
73 ... 62917, 64441
90 ... 64442
97 ... 64442

49 CFR
1033 ... 62899, 63105, 64410, 65075
1034 ... 65075
Proposed Rules:
Ch. X ... 64845
172 ... 65020
173 ... 65020
213 ... 64844
666 ... 62918
1001 ... 64846
1011 ... 64846
1056 ... 63121
1100 ... 64846
1131 ... 64846
1131a ... 64846
1301 ... 63121, 64851

50 CFR
17 ... 64246, 64247, 64250, 64730, 64736, 64738, 64741, 64744, 65002
32 ... 63106
33 ... 62899
285 ... 62900
611 ... 64410, 64421
672 ... 64410, 64421
Proposed Rules:
Ch. VI ... 63558
17 ... 63474
32 ... 63496
410 ... 64097
652 ... 65372
661 ... 64443

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.

REMINDERS

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.

Rules Going Into Effect Today

CIVIL AERONAUTICS BOARD

58500 10-10-79 / Uniform system of accounts and reports for certified air carriers; employment discrimination; nonoperating expenses

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner—

60085 10-18-79 / Neighborhood strategy area funding; policies, and procedures for assignment of contract authorization

Rules Going Into Effect November 10, 1979

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Assistant Secretary for Housing—Federal Housing Commissioner—

55332 9-26-79 / Mobile home loans; interim rule

NATIONAL CREDIT UNION ADMINISTRATION

58496 10-10-79 / Corporate Central Federal Credit Union; Operations and requirements

Rules Going Into Effect November 12, 1979

FEDERAL COMMUNICATIONS COMMISSION

58737 10-11-79 / Revision of cochannel mileage separation and frequency loading standards for conventional land mobile radio system in bands 806-821 and 851-866 MHz

58712 10-11-79 / Provision for use of emergency position indicating radio beacons (Class C) for vessels operating in coastal waters

[Corrected at 44 FR 61600; October 26, 1979]

58742 10-11-79 / Amateur radio service; changes in license term and notification procedures

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing November 8, 1979