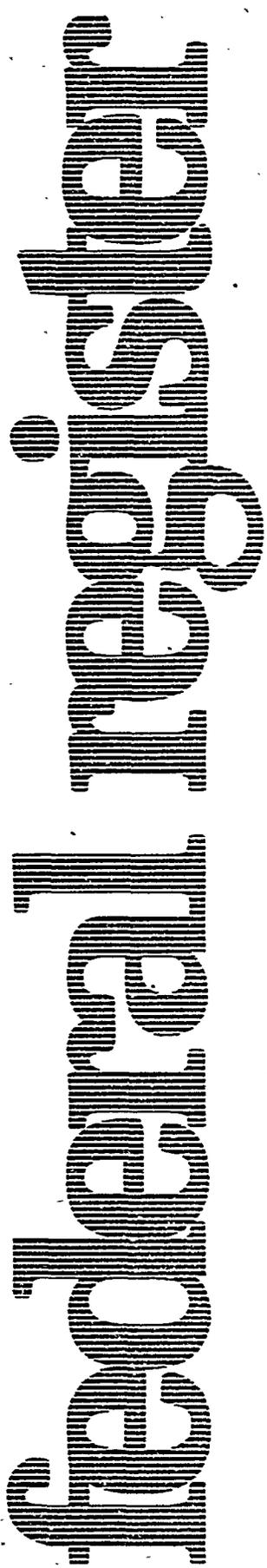


11-28-79  
Vol. 44—No. 230  
BOOK 1:  
PAGES  
67945-68200  
BOOK 2:  
PAGES  
68201-68430



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Book 1 of 2 Books  
Wednesday, November 28, 1979

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## Highlights

- 67947 **Entry of Iranian Aliens into the United States**  
Executive Order
  
- 67945 **National Child Abuse Prevention Month.**  
Presidential proclamation
  
- 68202 **Calendar of Federal Regulations** The U.S.  
Regulatory Council publishes catalog of regulations  
under development (Part IV of this issue)
  
- 68120 **Energy Performance Standards for New Buildings**  
DOE/Solar proposes rules; comments by 2-26-80  
(Part II of this issue)
  
- 68034 **Education** HEW/NIE announces closing dates for  
receipt of applications for grants in the Program of  
Grants for Research on Organizational Processes in  
Education
  
- 68042 **Research on Crime Control** Justice/LEAA  
announces competitive research program and  
solicits proposals by 4-1-80
  
- 68042 **Criminal Justice Research and Evaluation**  
Justice/LEAA announces competitive research  
program and solicits proposals by 3-1-80

CONTINUED INSIDE



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## Highlights

- 68184 Nuclear Activity—Physical Protection** NRC issues amendments to rule concerning strengthened physical protection for strategic special nuclear material, certain fuel cycle facilities, transportation and other activities involving significant quantities of strategic special nuclear material; effective 3-25-80 (Part III of this issue)
- 68057 Foreign Banks** Treasury/Comptroller proposes capital equivalency deposit agreement form; comments by 12-28-79
- 67982 Carpet Cushions** HUD/FHC amends minimum property standards; effective 12-28-79
- 67949 Noninflationary Pay and Price Behavior** CWPS adopts reporting form designated as Form CO-1 (Price); effective 11-28-79
- 68058 Treasury Notes—Series Z-1981** Treasury/Sec'y announces interest rate of 12½ percent
- 67952 Peanut Crop Insurance** USDA/FCIC issues rule prescribing procedures for insuring peanut crops effective with the 1980 crop year; effective 11-28-79
- 67980 Small Businesses** SBA issues rule concerning availability of energy loans; effective 11-28-79
- 67980 Small Businesses** SBA adopts rule on size standard for the water supply industry for purposes of SBA financial assistance; effective 11-20-79
- 67961 Federal Reserve Banks** FRS and Treasury/Comptroller adopts rule with regard to loans to executive officers, directors and principal shareholders of member banks; effective 12-31-79
- 67995 Federal Reserve Banks** FRS proposes rule concerning automated clearing house items; comments by 1-31-80
- 68058 Privacy Act** Treasury/Sec'y publishes a document affecting the systems of records; comments by 12-28-79
- 68056 Privacy Act** State publishes document affecting systems of records
- 68063 Sunshine Act Meetings**

### Separate Parts of This Issue

- 68120 Part II, DOE/Solar**
- 68184 Part III, NRC**
- 68202 Part IV, U.S. Regulatory Council**

# Contents

Federal Register  
Vol. 44, No. 230  
Wednesday, November 28, 1979

- The President**  
EXECUTIVE ORDERS  
67947 Iranian Aliens entering the United States (EO 12172)  
PROCLAMATIONS  
67945 Child Abuse Prevention Month, 1979, National (Proc. 4704)
- Executive Agencies**
- Agricultural Marketing Service**  
PROPOSED RULES  
67990 Grapes (Tokay) grown in Calif.
- Agriculture Department**  
*See Agricultural Marketing Service; Federal Crop Insurance Corporation.*
- Air Force Department**  
NOTICES  
Meetings:  
68009 Scientific Advisory Board
- Arts and Humanities, National Foundation**  
NOTICES  
Meetings:  
68042 Humanities Panel Advisory Committee  
68042 Humanities Panel Advisory Committee; cancelled
- Civil Aeronautics Board**  
NOTICES  
Environmental statements; availability, etc.:  
68002 Logan Airport, Boston; multiple permissive entry Hearings, etc.:  
68002 Denver-Cleveland/New York show-cause proceeding  
68002 Denver-Philadelphia show-cause proceeding  
68003 Houston-Tulsa Subpart Q proceeding  
68003 Wichita Authority show-cause proceeding  
NOTICES  
68063 Meetings; Sunshine Act (2 documents)
- Commerce Department**  
*See Industry and Trade Administration; Maritime Administration; National Oceanic and Atmospheric Administration.*
- Commodity Futures Trading Commission**  
NOTICES  
68064 Meetings; Sunshine Act
- Comptroller of Currency**  
NOTICES  
68057 Foreign banks; capital equivalency deposit agreement form, proposed
- Conservation and Solar Energy Office**  
PROPOSED RULES  
68120 New buildings energy performance standards
- Defense Communications Agency**  
NOTICES  
Meetings:
- 68008 Scientific Advisory Group
- Defense Department**  
*See Air Force Department; Defense Communications Agency; Navy Department.*
- Energy Department**  
*See Conservation and Solar Energy Office; Federal Energy Regulatory Commission.*
- Environmental Protection Agency**  
RULES  
Air quality implementation plans; delayed compliance orders:  
67986 Massachusetts  
NOTICES  
Meetings:  
68027 Drinking Water National Advisory Council
- Federal Crop Insurance Corporation**  
RULES  
Crop insurance; various commodities:  
67952 Peanuts
- Federal Emergency Management Agency**  
PROPOSED RULES  
Flood elevation determinations:  
68000 Illinois
- Federal Energy Regulatory Commission**  
RULES  
Natural Gas Policy Act of 1978:  
67982 Incremental pricing regulations; estimates and submetering requirements; technical conference; comments filing deadline  
NOTICES  
68009 Environmental statements; availability, etc.:  
Calaveras County Water District  
Hearings, etc.:  
68009, Colorado Interstate Gas Co. (2 documents)  
68010  
68010 Duke Power Co.  
68011 Energy Reserves Group, Inc.  
68011 Gas Transport, Inc.  
68012 Kansas-Nebraska Natural Gas Co. Inc.  
68012 Kennebago Corp.  
68013 Michigan Wisconsin Pipe Line Co. (2 documents)  
68014 Natural Gas Pipeline Co. of America et al.  
68015, Northern Natural Gas Co. (3 documents)  
68016  
68017 Prestonsburg City Utility Commission  
68018 South Georgia Natural Gas Co. (2 documents)  
68017 Southern Natural Gas Co.  
68018 Southwest Gas Corp.  
68019 Tennessee Gas Pipeline Co.  
68019 Texas Eastern Transmission Corp.  
68020, Transcontinental Gas Pipe Line Corp. (3 documents)  
68021  
68022, United Gas Pipe Line Co. (3 documents)  
68023  
68023 Western Gas Interstate Co.

- Natural gas companies:  
**68024** Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend
- Federal Home Loan Bank Board**  
**NOTICES**  
 Applications, etc.:  
**68027** Home Federal Savings & Loan Association of Palm Beach
- Federal Housing Commissioner—Office of Assistant Secretary for Housing**  
**RULES**  
**67982** Carpet cushion, detached; standards
- Federal Maritime Commission**  
**NOTICES**  
**68027, 68028** Agreements filed, etc. (2 documents)  
**68028** Complaints filed:  
**68028** Amstar Corp. v. Sea-Land, Inc.
- Federal Reserve System**  
**RULES**  
**67961** Banks, State; securities (Regulation F)  
 Loans to executive officers, directors, and principal shareholders (Regulation O):  
**67973** Reporting requirements for member banks and correspondent banks  
**PROPOSED RULES**  
 Collection of checks and other items and transfer of funds (Regulation J):  
**67995** Automated clearinghouse facilities  
**NOTICES**  
 Applications, etc.:  
**68030** Banks of Iowa, Inc.  
**68030** Citizens Capital Corp.  
**68030** Citizens State Bancorporation  
**68028** Continental Illinois Corporation  
**68030** County Bancshares, Inc.  
**68031** D & B Holding Co., Inc.  
**68031** Elizabethtown Bancshares, Inc.  
**68031** Fidelcor, Inc.  
**68031** First Atlanta Corp.  
**68032** First Citizens Bancorp.  
**68032** First National Charter Corp.  
**68029** Industrial National Corporation  
**68028** New Jersey National Corporation  
**68032** Orbanco, Inc.  
**68032** Pittsburgh International Finance Corp.  
**68034** Sheldon Security Bancorporation, Inc.  
**68033** Financial futures, forward placement and standby contracts; policy statement
- Federal Trade Commission**  
**RULES**  
**67981** Prohibited trade practices; cease and desist orders:  
 Karr Preventative Medical Products, Inc., et al.  
**PROPOSED RULES**  
**68000** Consumers' claims and defenses, preservation:  
 Opening of record; inquiry; correction
- Fish and Wildlife Service**  
**NOTICES**  
**68038, 68039** Endangered and threatened species permits; applications (2 documents)
- Health, Education, and Welfare Department**  
*See* National Institute of Education; National Institutes of Health; Public Health Service.
- Housing and Urban Development Department**  
*See* Federal Housing Commissioner—Office of Assistant Secretary for Housing.
- Immigration and Naturalization Service**  
**RULES**  
**67960** Immigration Appeals Board; hearings; editorial amendments
- Industry and Trade Administration**  
**NOTICES**  
 Meetings:  
**68003** Computer Systems Technical Advisory Committee
- Interior Department**  
*See* Fish and Wildlife Service; Land Management Bureau.
- International Trade Commission**  
**NOTICES**  
 Import investigations:  
**68039** Nonrubber footwear components from India  
**68041** Sugar from Canada  
**68040** Spun acrylic yarn from Japan
- Interstate Commerce Commission**  
**RULES**  
**67989** Railroad car service orders; various companies:  
 Chicago & North Western Transportation Co.  
**NOTICES**  
**68062** Fourth section applications for relief; correction  
 Rail carriers:  
**68059** Conrail surcharge on pulpboard  
**68062** Railroad operation, acquisition, construction, etc.:  
 Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; correction  
**68059** Conrail  
**68062** Golden Triangle Railroad; correction  
 Rerouting of traffic:  
**68061** Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
- Justice Department**  
*See also* Immigration and Naturalization Service; Law Enforcement Assistance Administration.  
**NOTICES**  
 Pollution control; consent judgments:  
**68041** Danville, Va.
- Land Management Bureau**  
**NOTICES**  
 Applications, etc.:  
**68036** Idaho  
**68037** Wyoming  
 Meetings:  
**68037** Deep Creek Mountains, Utah; future management proposals; clarification  
 Reconveyance of land:  
**68038** Nevada (3 documents)  
 Wilderness areas; characteristics, inventories, etc.:  
**68036** Montana  
**68037** New Mexico

- Law Enforcement Assistance Administration**  
NOTICES  
Grants solicitation, competitive research:  
68042 Crime control effects  
68042 Methodological issues in criminal justice research and evaluation
- Maritime Administration**  
NOTICES  
68004 National Defense Reserve Fleet, disposition of obsolete vessels; authorizing legislation; notification
- National Institute of Education**  
NOTICES  
Grant programs, application closing dates:  
68034 Organizational processes in education
- National Institutes of Health**  
NOTICES  
Meetings:  
68035 Heart, Lung, and Blood Research Review Committee A; correction
- National Mediation Board**  
NOTICES  
68064 Meetings; Sunshine Act
- National Oceanic and Atmospheric Administration**  
PROPOSED RULES  
Fishery conservation and management:  
68001 Bering Sea-Chukchi Sea herring, hearing; extension of time  
NOTICES  
Meetings:  
68004 New England Fishery Management Council  
68005 North Pacific Fishery Management Council
- Navy Department**  
NOTICES  
Meetings:  
68009 Naval Research Advisory Committee
- Nuclear Regulatory Commission**  
RULES  
Nuclear material, special; domestic licensing, etc.:  
68184 Physical protection upgrade rule  
NOTICES  
Meetings:  
68042 Reactor Safeguards Advisory Committee
- Occupational Safety and Health Review Commission**  
NOTICES  
68064 Meetings; Sunshine Act
- Postal Service**  
NOTICES  
68064 Meetings; Sunshine Act (2 documents)
- Public Health Service**  
NOTICES  
Grants; availability:  
68035 Adolescent pregnancy prevention and services projects
- Regulatory Council**  
NOTICES  
68202 Regulatory calendar for Federal agencies
- Securities and Exchange Commission**  
NOTICES  
Hearings, etc.:  
68043 Boston Mutual Life Insurance Co. et al.  
68045 Cedar Coal Co. et al.  
68046 Eaton & Howard Cash Management Fund  
68048 Michigan Power Co. et al.  
68049 Middle South Utilities, Inc., et al.  
68050 Smith Barney, Harris Upham & Co., Inc., et al.  
68052 Wolf, Block, Schorr & Solis-Cohen Retirement Plan  
Self-regulatory organizations; proposed rule changes:  
68046 Depository Trust Co.  
68049 New York Stock Exchange, Inc.  
68053 Stock Clearing Corporation of Philadelphia
- Small Business Administration**  
RULES  
67980 Energy loans; approval under other loan programs  
67980 Small business size standards:  
67980 Loan guarantees; water supply industry  
NOTICES  
Applications, etc.:  
68053 Allied Bancshares Capital Corp.  
68053 Fluid Capital Corp.  
68054 Frontenac III Corp.  
68054 Grocers Capital Corp. (2 documents)  
68055 Lasung Investment & Finance Co.  
68055 South Florida Capital Corp.  
Meetings; advisory councils:  
68056 Cleveland
- State Department**  
NOTICES  
Meetings:  
68057 International Telegraph and Telephone Consultative Committee  
68056 Privacy Act; systems of records
- Textile Agreements Implementation Committee**  
NOTICES  
Cotton, wool, and man-made textiles:  
68005 Philippines  
68007 Poland  
Man-made textiles:  
68008 Taiwan
- Treasury Department**  
*See also* Comptroller of Currency.  
NOTICES  
Notes, Treasury:  
68058 Z-1981 series  
68058 Privacy Act; systems of records
- Veterans Administration**  
NOTICES  
Meetings:  
68059 Health-Related Effects of Herbicides Advisory Committee

**Wage and Price Stability Council**

**RULES**

- 67949 Noninflationary pay and price behavior; adoption of Form CO-1 (Price)
- 

**MEETINGS ANNOUNCED IN THIS ISSUE**

---

**COMMERCE DEPARTMENT**

Industry and Trade Administration—

- 68003 Computer Systems Technical Advisory Committee, 12-18-79

National Oceanic and Atmospheric Administration—

- 68004 New England Fishery Management Council, 12-12-79

- 68005 North Pacific Fishery Management Council and Advisory Panel, 12-13-79

**DEFENSE COMMUNICATIONS AGENCY**

- 68008 Scientific Advisory Group, 1-10 and 1-11-80

**DEFENSE DEPARTMENT**

Department of the Air Force—

- 68009 USAF Scientific Advisory Board Ad Hoc Committee, 12-18-79

Department of the Navy—

- 68009 Naval Research Advisory Committee, 12-13 and 12-14-79

**ENVIRONMENTAL PROTECTION AGENCY**

- 68027 National Drinking Water Advisory Council, 12-13 and 12-14-79

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT**

- 68035 Regional technical assistance workshops for prospective applicants to the adolescent pregnancy prevention and services projects grant program. November, December and January dates

**NUCLEAR REGULATORY COMMISSION**

- 68042 Reactor Safeguards Advisory Committee, Subcommittee on Power and Electrical Systems, 12-13-79

**STATE DEPARTMENT**

Office of the Secretary—

- 68057 International Telegraph and Telephone Consultative Committee, Study Group A of U.S. Organization, 12-19-79

**VETERANS ADMINISTRATION**

- 68059 Advisory Committee on Health-Related Effects of Herbicides, 12-12-79

**CANCELLED MEETINGS**

**NATIONAL ENDOWMENT FOR THE HUMANITIES**

- 68042 Humanities Panel, 12-6 and 12-7-79

**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.

**3 CFR**

**Executive Orders:**  
12172..... 67947

**Proclamations:**  
4704..... 67945

**6 CFR**

705..... 67949  
706..... 67949  
707..... 67949

**7 CFR**

401..... 67954  
425..... 67954

**Proposed Rules:**

Ch. IX..... 67990

**8 CFR**

3..... 67960

**10 CFR**

70..... 68184  
73..... 68184  
150..... 68184

**Proposed Rules:**

435..... 68120

**12 CFR**

206..... 67961  
215..... 67973

**Proposed Rules:**

210..... 67995

**13 CFR**

121..... 67980  
130..... 67980

**16 CFR**

13..... 67981

**Proposed Rules:**

433..... 68000

**18 CFR**

282..... 67982

**24 CFR**

200..... 67982

**40 CFR**

55..... 67986

**44 CFR****Proposed Rules:**

67..... 68000

**49 CFR**

1033..... 67989

**50 CFR****Proposed Rules:**

676..... 68001



# Presidential Documents

Title 3—

The President

Proclamation 4704 of November 26, 1979

National Child Abuse Prevention Month, 1979

By the President of the United States of America

## A Proclamation

America's children are our most precious resource, and in this final month of the International Year of the Child I urge all Americans to consider what they can do to prevent child abuse and neglect.

The needs of children are best met in families where provisions can be made for the special needs and limitations of all family members. Even loving parents sometimes fail to provide adequate supervision, or find themselves in situations where needs are not met or emotions are difficult to control.

I urge communities and helping organizations to work with families to alleviate conditions that result in the abuse and neglect of children. I especially urge all those who feel unable to cope with problems to seek out help.

Our Nation's children are our Nation's future. We all share in the responsibility for making sure they grow up in a healthful environment. I appeal to public agencies, private organizations and the business community to support needed social, educational and health services in their communities to strengthen families during the critical child-rearing years.

Working together, with sensitivity and concern, we can reduce the incidence and lifelong damage of child abuse.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the month of December, 1979, as National Child Abuse Prevention Month.

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





## Presidential Documents

Executive Order 12172 of November 26, 1979

### Delegation of Authority With Respect to Entry of Certain Aliens Into the United States

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including the Immigration and Nationality Act, as amended, 8 USC 1185 and 3 USC 301, it is hereby ordered as follows:

Section 1-101. Delegation of Authority. The Secretary of State and the Attorney General are hereby designated and empowered to exercise in respect of Iranians holding nonimmigrant visas, the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185), to prescribe limitations and exceptions on the rules and regulations governing the entry of aliens into the United States.

Section 1-102. Effective Date. This order is effective immediately.

THE WHITE HOUSE,  
November 26, 1979.





# Rules and Regulations

Federal Register

Vol. 44, No. 230

Wednesday, November 28, 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.

## COUNCIL ON WAGE AND PRICE STABILITY

### 6 CFR Parts 705, 706 and 707

#### Noninflationary Pay and Price Behavior; Adoption of Form CO-1 (Price)

**AGENCY:** Council on Wage and Price Stability.

**ACTION:** Adoption of reporting form and request for submission of data.

**SUMMARY:** The Council is adopting a reporting form designated as Form CO-1 (Price) and requesting the submission of data by December 17, 1979.

**EFFECTIVE DATE:** November 28, 1979.

**FOR FURTHER INFORMATION CONTACT:** Anne Marie Hummel, Office of Price Monitoring, Council on Wage and Price Stability, 600 17th Street, NW., Washington, D.C. 20506, 202/456-7107.

**SUPPLEMENTARY INFORMATION:** The Council has published voluntary standards for non-inflationary price behavior applicable during the second program year. (6 CFR Part 705 44 FR 64276), (November 6, 1979). To assist in monitoring compliance with the price standards, the Council is hereby adopting Form CO-1 (Price). This form is to be used for reporting to the Council on Wage and Price Stability the structure of companies for purposes of complying with the price standards during the second program year. Companies may reorganize their compliance units for purposes of compliance with the price and pay standards, separately, at the beginning of the second program year, but not thereafter. Any forms concerning pay will be covered by separate notice.

The Council designed Form CO-1 (Price) in order to minimize companies' reporting burden by specifying precisely all information about organization that will be necessary for assessing compliance with the Price Standard.

Because companies are able to specify only one organizational structure for each program year, it will only be necessary to complete this form once. Because the form is filed annually, it is also being used to facilitate the provision of those data that are only reported once a year. Consequently, Form CO-1 (Price) is a simple vehicle for satisfying a number of the Council's data needs for the entire year.

The data requests made in the text of Form CO-1 (Price) are pursuant to 6 CFR 706.21(c) and 707.1(a), and are directed to companies that had net sales or revenues of \$250 million or more in their last complete fiscal year before October 2, 1979, and any other companies designated by the Council. The Council has already sent copies of Form CO-1 (Price) to approximately 1,300 companies which meet the reporting threshold. However, all such companies are requested to submit Form CO-1 (Price) to the Council. Although the Council asked originally that the completed form be filed by December 1, 1979, we have revised the filing date to December 17, 1979.

While the submission of data is voluntary, the Council views the access to timely, uniformly defined data as essential to the effective monitoring of compliance with the standards. The data will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904 note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).

In accordance with 6 CFR 706.20, if a company has furnished the Council with any of the data requested by Form CO-1 (Price), it need not furnish them again, although it should identify for the Council the document (including page references) containing such data and the date on which the data was submitted.

This form was submitted to the Office of Management and Budget in accordance with the Federal Reports Act, and was approved under No. 116-S79020.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note); E.O. 12092.)

Issued in Washington, D.C., November 23, 1979.

R. Robert Russell,  
*Director, Council on Wage and Price Stability.*

BILLING CODE 3175-01-M

Form CO-1 (Instructions)

OMB No: 116-S79020

INSTRUCTIONS FOR PREPARATION OF  
REPORT OF COMPANY ORGANIZATION

Form CO-1 (Price)

A. Purpose of Form CO-1 (Price). The Council on Wage and Price Stability has developed a form for reporting on company organization, Form CO-1 (Price), to help the Council monitor compliance with the voluntary price standard. During the first program year, companies were asked to report to the Council on their organization for compliance with the standards, but no form was provided. Most companies submitted lengthy reports. It is expected that Form CO-1 (Price) will greatly reduce the reporting burden on companies. In general, the Council wishes to obtain the data needed to monitor compliance with the voluntary standards while placing a minimum burden on companies.

B. Authority for Form CO-1 (Price). The Council on Wage and Price Stability Act, 12 U.S.C., Section 1904, note, authorized the Council to collect data on wages, costs, productivity, prices, sales, profits, imports, and exports by product line or by such other categories as the Council may prescribe.

C. Publication of the Revised Standards. The revised price standard was published in the Federal Register at 44 FR 64276 - 64284 on November 6, 1979. Please note: all of the terms used on Form CO-1 (Price) as well as the referenced Sections are as defined or set forth in the revised standard.

D. Confidentiality of Information. All information furnished the Council on Form CO-1 (Price) will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C., Section 1904, note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).

E. Who Should File

(1) Any company or compliance unit specifically requested by the Council to do so.

(2) Any other company, as defined in 705.63, with at least \$250 million in net sales or revenues (from domestic operations only) in its last complete fiscal year before October 2, 1979, unless the entire company is a financial institution subject to 705.50 or an insurance company subject to 705.48 or 705.49.

F. Choice of Organization for Compliance. A company may be divided into two or more compliance units if the conditions in 705.64 are satisfied. Companies need not adopt the same organizational structure as in the first program year. Also, the organizational structure adopted for compliance with the price standard need not be the same structure as that adopted for compliance with the pay standard.

G. Special Instructions. Although data on net sales or revenues (column g) is requested for all compliance units, data on exclusions and on covered sales or revenues (columns h - l) is only requested for compliance units on the price limitation or profit limitation standards.

<p><b>FORM CO-1 (Price)</b></p> <p style="text-align: center;">EXECUTIVE OFFICE OF THE PRESIDENT COUNCIL ON WAGE AND PRICE STABILITY</p> <p style="text-align: center;"><b>REPORT OF COMPANY ORGANIZATION FOR THE SECOND PROGRAM YEAR</b></p> <p>OMB No: 116-S79020</p>	<p><b>NOTICE</b> - All information furnished to the Council on Form CO-1 will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, and 6 CFR Part 702 44 FR 59166 (October 12, 1979)</p>						
<p><b>PLEASE READ THE ENCLOSED INSTRUCTIONS BEFORE COMPLETING THIS REPORT</b></p>	<p>Send this form with relevant attachments to:</p> <ul style="list-style-type: none"> <li>• Office of Price Monitoring</li> <li>• Council on Wage and Price Stability</li> <li>• Winder Building</li> <li>• 600 17th Street, NW.</li> <li>• Washington, D.C. 20506</li> </ul> <p><b>NOTE:</b> Please indicate "Submission of Form CO-1/<sup>(Price)</sup> in the lower left hand corner of the envelope.</p>						
<p>What were the net sales or revenues of this company in its last complete fiscal year prior to October 2, 1979?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Bill.</td> <td style="width: 33%; text-align: center;">Mil.</td> <td style="width: 33%; text-align: center;">Thou.</td> </tr> <tr> <td style="height: 20px;"> </td> <td> </td> <td> </td> </tr> </table>		Bill.	Mil.	Thou.			
Bill.	Mil.	Thou.					

<b>Certification</b>	
a. Name of Chief Executive Officer or authorized designee	Title
b. Name of Company	Telephone (Area code, No., Ext.)
c. Name of person to contact regarding this report	Telephone (Area code, No., Ext.)
d. Address (If different from mailing label)	
<p>To the best of my knowledge and belief, the data submitted herewith are factually correct, complete, and prepared in accordance with instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Part 702, 44 FR 59166 (October 12, 1979).</p>	
e. Signature	Date

LIST OF COMPLIANCE UNITS

(a) Name of Compliance Unit	(b) Principal Line of Business	(c) SIC No. 1/	(d) Same Compliance Unit as First Program Year?		(e) Standard Followed (Enter Code) 2/	(f) CWPS Use Only
1.			Yes	No		
2.			Yes	No		
3.			Yes	No		
4.			Yes	No		
5.			Yes	No		
6.			Yes	No		
7.			Yes	No		
8.			Yes	No		
9.			Yes	No		
10.			Yes	No		
<u>Total Company</u>						

1/ Four-digit 1972 Standard Industrial Classification Code  
2/ Code for Standards Followed:

- A - Price Limitation
- B - Percentage-Gross-Margin Standard for Wholesale and Retail Trade
- C - Gross-Margin Standard for Food Manufacturing and Processing
- D - Gross-Margin Standard for Petroleum-Refinery Operations
- F - Standard for Financial Institutions
- I - Price Standard for Insurance Providers
- M - Price Standard for Medical and Dental Insurance Providers
- P - Profit Limitation
- U - Gross-Margin Standard for Electric, Gas, and Water Utilities

SALES OR REVENUES FOR THE FIRST PROGRAM YEAR

Items (h) through (l) are only to be completed for compliance units on the price limitation or profit limitation standards

Compliance Unit No.	(g) Net Sales or Revenues		(h) Non-Arms Length Transactions		(i) New or Discontinued Products		(j) Custom Products		(k) Deliveries at Preset Prices		(l) Covered Sales or Revenues (after exclusions)	
	Bill.	Mill. Thou.	Bill.	Mill. Thou.	Bill.	Mill. Thou.	Bill.	Mill. Thou.	Bill.	Mill. Thou.	Bill.	Mill. Thou.
1.												
2.												
3.												
4.												
5.												
6.												
7.												
8.												
9.												
10.												
Total Company												

3/ Deliveries during the first program year at prices determined by contracts in effect before October 2, 1978  
 4/ Show covered sales after all exclusions under 705.4

Attach continuation sheets if necessary

[FR Doc. 79-36600 Filed 11-27-79; 8:45 am]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401, 425

Peanut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule proscribed procedures for insuring peanut crops effective with the 1980 crop year. The rule combines provisions from previous regulations for insuring peanuts in a shorter, clearer, and more simplified document which will make the program

more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, D.C. 20250, telephone 202-447-3925.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the Federal Register on September 5, 1979 (44 FR 51807), outlining prescribed procedures for

insuring peanut crops effective with the 1980 crop year. In the notice, FCIC, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), proposed that a new Part 425 of Chapter IV in Title 7 of the Code of Federal Regulations be established to prescribe procedures for insuring peanut crops effective with the 1980 crop year to be known as 7 CFR Part 425 Peanut Crop Insurance.

All previous regulations applicable to insuring peanut crops, as found in 7 CFR 401.101-401.111, and 401.138, are not applicable to 1980 and succeeding peanut crops but remain in effect for FCIC peanut insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring peanut crops into one shortened, simplified, and clearer regulation would be more effective administratively.

In addition, 7 CFR Part 425 provides (1) for a Premium Adjustment Table which replaces the current premium discount provisions and includes a maximum 50 percent premium reduction for good insurance experience, as well as premium increases for unfavorable experience, on an individual contract basis, (2) for the consolidation of cancellation and termination for indebtedness dates to the extent possible, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Actuarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest to the present percent level offered in each county, (8) that when appraisals for unharvested acreage are made (except appraisals for uninsured causes or poor farming practices) only the appraisal in excess of 20 percent of the amount of insurance will be included in the value of production, and (9) for an increase in the limitation from \$5,000 to \$20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 425.5 of these

regulations, wherein the Manager of the Corporation is authorized to take action to grant relief.

The Peanut Crop Insurance regulations provide a December 31 cancellation date for all peanut producing counties.

These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the cancellation date, in order to afford farmers an opportunity to examine them before the cancellation date of December 31, 1979, before they become effective for the 1980 crop year.

Under the provisions of Executive Order No. 12044, and the Administrative Procedure Act (5 U.S.C. 553 (b) and (c)), the public was given an opportunity to submit written comments, data, and views on the proposed regulations. While there were no comments received from the general public, the Corporation received a comment from the Office of the Inspector General, Rural Development and Farm Programs Division, which suggested that the proposed regulations should be clarified to assure limitations of insurance coverage to the acreage allotment and/or poundage quota established for the producer by the Agricultural Stabilization and Conservation Service (ASCS) for the year the peanuts are planted.

The provisions of the proposed Peanut Crop Insurance Regulations provide that insurance can only attach a peanut acreage on farms which have a peanut acreage allotment and quota. The proposed regulations also provide that insurance shall not be considered to have attached to any acreage which is destroyed in order to conform with any other program administered by the Secretary of Agriculture; i.e., the Peanut Program Regulations as administered by ASCS. The Federal Crop Insurance Corporation will only insure peanuts grown on insurable acreage on farms where there is an allotment, and will revise acreage reports for insurance purposes when acreage is destroyed in compliance with the Peanut Program Regulations.

Since most growers produce nonquota peanuts on their allotment and the Corporation insures both quota and nonquota peanuts on insurable acreage, it would seem inconsistent with the best interests of agriculture, in view of the

large volume of nonquota peanuts being marketed, to limit insurance coverage to quota peanuts only.

For this reason, the Corporation has determined that the suggestion to limit insurance coverage, as proposed in the comment, is not acceptable.

Therefore, with the exception of minor and nonsubstantive corrections to language, the regulations as contained in the proposed rule are hereby issued as a final rule to be in effect starting with the 1980 crop year.

In addition, there is hereby added to the final rule an Appendix "B", which lists the counties where peanut crop insurance is available in accordance with the provisions of 7 CFR 425.1 outlined below which state in part that "before insurance is offered in any county there shall be published by appendix to this part the names of the counties in which such insurance shall be offered."

Inasmuch as the publication of the list of counties and crops insured by the Federal Crop Insurance Corporation as contained in Appendix "B" merely provides guidance for the general public and has no effect on the provisions of the insurance plan, the Corporation has determined that compliance with the procedure for notice and public participation in the proposed rulemaking process would be impracticable, unnecessary, and contrary to the public interest. Therefore, Appendix "B" is issued without compliance with such procedure.

#### Final Rule

#### PART 401—FEDERAL CROP INSURANCE

##### § 401.138 [Reserved]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby deletes and reserves 7 CFR 401.138, with such regulations as are contained therein remaining in effect for FCIC insurance policies issued for crop years prior to 1980, and issues a new Part 425 in Chapter IV of Title 7 of the Code of Federal Regulations (7 CFR Part 425) to be known as the Peanut Crop Insurance Regulations, which shall remain in effect, until amended or superseded, for the 1980 and succeeding crop years, to read as follows:

**PART 425—PEANUT CROP INSURANCE**

**Subpart—Regulations for the 1980 and Succeeding Crop Years**

- Sec.
- 425.1 Availability of Peanut Insurance
- 425.2 Premium rates, coverage levels and amounts of insurance per acre
- 425.3 Public notice of indemnities paid
- 425.4 Creditors
- 425.5 Good faith reliance on misrepresentation
- 425.6 The contract
- 425.7 The application and policy

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

**§ 425.1 Availability of Peanut Insurance.**

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

**§ 425.2 Premium rates, coverage levels, and amounts of insurance per acre.**

(a) The Manager shall establish premium rates, coverage levels, and applicable pounds of peanuts per acre to determine the dollar amounts of insurance which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level from among those levels shown on the actuarial table for the crop year.

**§ 425.3 Public notice of indemnities paid.**

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

**§ 425.4 Creditors.**

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

**§ 425.5 Good faith reliance on misrepresentation.**

Notwithstanding any other provision of the peanut insurance contract, whenever (a) an insured person under a contract of crop insurance entered into

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

**§ 425.6 The contract.**

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the peanut crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

**§ 425.7 The application and policy.**

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

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

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

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a peanut contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Peanut Insurance Policy for the 1980 and succeeding crop years, and the Appendix to the Peanut Insurance Policy are as follows:

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**Application for 19— and succeeding crop years—PEANUT**

**Crop Insurance Contract**

(Contract Number) \_\_\_\_\_  
 (Identification Number) \_\_\_\_\_  
 (Name and Address) \_\_\_\_\_  
 (Zip Code) \_\_\_\_\_  
 (County) \_\_\_\_\_  
 (State) \_\_\_\_\_  
 Type of Entity \_\_\_\_\_  
 Applicant is Over 18 Yes \_\_\_\_\_ No \_\_\_\_\_

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the peanuts planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level. **THE PREMIUM RATES AND APPLICABLE POUNDS PER ACRE USED TO DETERMINE THE AMOUNT OF INSURANCE SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.**

**Level Election \_\_\_\_\_**

**EXAMPLE: FOR THE 19— CROP YEAR ONLY (100% SHARE)**

Location/ Farm No.	Amount of insurance per acre*	Premium per acre**	Practice
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\* Your guarantee will be on a unit basis (acres x amount of insurance per acre x share).  
 \*\* Your premium is subject to adjustment in accordance with section 5(c) of the policy.

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED as provided in the contract. This accepted application, the following peanut insurance policy, the attached appendix, and the provisions of the county actuarial table showing the applicable pounds per acre used to determine the dollar amount of insurance, coverage levels, premium rates, and insurable and uninsurable acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness to Signature) \_\_\_\_\_

(Signature of Applicant) \_\_\_\_\_

(Date) \_\_\_\_\_, 19\_\_\_\_

Address of Office for County: \_\_\_\_\_

Phone: \_\_\_\_\_

Location of farm headquarters: \_\_\_\_\_

Phone: \_\_\_\_\_

**PEANUT CROP INSURANCE POLICY**

**TERMS AND CONDITIONS**

Subject to the provisions in the attached appendix:

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

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

2. CROP AND ACREAGE INSURED. (a) The crop insured shall be peanuts planted for the purpose of digging, maturing and marketing as farmers' stock peanuts, as determined by the Corporation, and which is grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage planted to peanuts on insurable acreage as shown on the actuarial table, and the insured's share therein as

reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) not planted to a type shown as insurable on the actuarial table, (2) planted on a farm for which an acreage allotment and poundage quota for peanuts was not established, (3) destroyed for the purpose of conforming with any other program administered by the Secretary of Agriculture, (4) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (5) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (6) which is destroyed and after such destruction it was practical to replant to peanuts and such acreage was not replanted, (7) initially planted after the date on file in the office for the county which has been established by the Corporation as being too late to initially plant and expect a normal crop to be produced, or (8) planted for experimental purposes.

3. RESPONSIBILITY OF INSURED TO REPORT ACREAGE AND SHARE. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of peanuts planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of planting. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. COVERAGE LEVELS AND AMOUNT OF INSURANCE PER ACRE. (a) For each crop year of the contract, the coverage levels and applicable pounds of peanuts per acre to be used to determine the dollar amount of insurance shall be those shown on the actuarial table. The dollar amount of insurance per acre for each crop year shall be the applicable pounds of peanuts per acre multiplied by the average quota support price per pound for the insured type of peanuts for the crop year as announced by the United States Department of Agriculture under the current price support program and this result rounded to the nearest whole dollar.

(b) The amount of insurance per acre shall be reduced by 20 percent for any unharvested acreage.

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

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

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

BILLING CODE 3410-08-M

% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE																
Loss Ratio <sup>1/</sup> Through Previous Crop Year	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	80	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE

Loss Ratio <sup>1/</sup> Through Previous Crop Year	Number of Loss Years Through Previous Year <sup>2/</sup>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.10 - 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 - 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 - 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 - 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 - 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 - 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 - 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 - 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 - 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 - Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

<sup>1/</sup> Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

<sup>2/</sup> Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however*, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

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

6. **INSURANCE PERIOD.** Insurance on insured acreage shall attach at the time the peanuts are planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) threshing or removal of the peanuts from the field, (c) total destruction of the insured peanut crop, or (d) the November 30 of the calendar year in which the peanuts are normally harvested.

7. **NOTICE OF DAMAGE OR LOSS.** (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

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

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 DAYS after the earliest of (1) completion of selling or otherwise disposing of the insured crop on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire peanut crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

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

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

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

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

(c) The value of the total production to be counted for a unit shall be determined by the Corporation and shall include the value of all threshed and appraised production as follows:

(1) Threshed production which has been sold shall be valued at the gross receipt or the fair market value (as determined by the Corporation) taking into consideration the average quota support price.

(2) Unthreshed, unharvested or threshed but not sold production shall be valued at the fair market value (as determined by the Corporation) taking into consideration the average quota support price.

(3) The value of appraised production to be counted shall include (i) any appraisals made by the Corporation for potential production on harvested acres, for uninsured causes of loss, and for poor farming practices, valued at the average quota support price or fair market value (as determined by the Corporation), whichever is higher, (ii) not less than the applicable amount of insurance for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iii) only the value of the production in excess of 20 percent of the amount of insurance for all other unharvested acreage.

(d) The value of the appraised potential production for acreage for which consent has been given to be put to another use shall be counted as the value of the production in determining the amount of loss under the contract. *However*, if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of peanuts becomes general in the county, (2) is

harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

(e) To enable the Corporation to determine the fair market value of any peanuts for which a United States Department of Agriculture "Inspection Certificate and Sales Memorandum" has not been issued, the Corporation shall be given the opportunity to have such peanuts inspected and graded before they are disposed of by the insured. If the insured disposes of any production without giving the Corporation the opportunity to have the peanuts inspected and graded, the value of such production shall be the average quota support price per pound for the crop year under the peanut price support program for the insured type.

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

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

11. **RECORDS AND ACCESS TO FARM.** The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all peanuts produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. **LIFE OF CONTRACT: CANCELLATION AND TERMINATION.** (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State: All states.

Cancellation date: Dec. 31.

Termination date for indebtedness: Mar. 31.

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

#### APPENDIX

##### (ADDITIONAL TERMS AND CONDITIONS)

1. MEANING OF TERMS. For the purposes of peanut crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the pounds of peanuts per acre used to determine the amount of insurance, insurable and uninsurable acreage, and related information regarding peanut insurance in the county.

(b) "Average quota support price per pound" means the average quota support price per pound for the insured type of peanuts for the crop year as announced by the United States Department of Agriculture under the current price support program. If such price is not announced by July 15 of the crop year, the Corporation may elect to use the national average support price and determine the price by type based on the differentials in effect the previous crop year. *Provided, however,* That for any crop year in which a quota support price is not in effect, the estimated average market price, as determined by the Corporation, shall be used in lieu thereof.

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

(d) "Crop year" means the period within which the peanut crop is normally grown and shall be designated by the calendar year in which the peanut crop is normally harvested.

(e) "Harvest" as to any acreage means the digging of at least 20 percent of the applicable pounds per acre of peanuts as shown on the actuarial table for the purpose of combining or threshing.

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

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

(h) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

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

(j) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured peanut crop at the time of planting as reported by the insured or as determined by the Corporation, whichever

the Corporation shall elect, and no other share shall be deemed to be insured: *Provided,* That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

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

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

2. ACREAGE INSURED. (a) The Corporation reserves the right to limit the insured acreage of peanuts to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of peanuts.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

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

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

4. ANNUAL PREMIUM. (a) If there is no break in the continuity of participation, any

premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however,* any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. CLAIM FOR AND PAYMENT OF INDEMNITY. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

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

(c) There shall be no abandonment to the Corporation of any insured peanut acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c); *Provided,* That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

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

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

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

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

#### 7. TERMINATION OF THE CONTRACT.

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

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however,* if such

event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

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

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

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

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

**Appendix "B"—Counties Designated for Peanut Crop Insurance—7 CFR Part 425**

In accordance with the provisions of 7 CFR 425.1, the following counties are designated for peanut crop insurance:

*State and County and Type(s) of Peanuts Insured*

ALABAMA	
Barbour.....	Runner, Southeast. Spanish, Virginia.
Coffee.....	Do.
Conecuh.....	Do.
Covington.....	Do.
Crenshaw.....	Do.
Dale.....	Do.
Geneva.....	Do.
Henry.....	Do.
Houston.....	Do.
Pike.....	Do.

**FLORIDA**

Jackson.....	Runner, Southeast Spanish, Virginia.
Santa Rosa.....	Do.

**GEORGIA**

Baker.....	Runner, Southeast Spanish, Virginia.
Ben Hill.....	Do.
Bullock.....	Do.
Calhoun.....	Do.
Clay.....	Do.
Coffee.....	Do.
Colquitt.....	Do.
Cook.....	Do.
Crisp.....	Do.
Decatur.....	Do.

*State and County and Type(s) of Peanuts Insured*

**GEORGIA**

Dodge.....	Do.
Dooley.....	Do.
Early.....	Do.
Grady.....	Do.
Houston.....	Do.
Irwin.....	Do.
Laurens.....	Do.
Lee.....	Do.
Miller.....	Do.
Mitchell.....	Do.
Randolph.....	Do.
Seminole.....	Do.
Sumner.....	Do.
Terrell.....	Do.
Thomas.....	Do.
Tift.....	Do.
Toombs.....	Do.
Turner.....	Do.
Wilcox.....	Do.
Worth.....	Do.

**NEW MEXICO**

Roosevelt.....	Valencia.
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**NORTH CAROLINA**

Bertie.....	Runner, Virginia.
Bladen.....	Virginia.
Chowan.....	Do.
Edgecombe.....	Runner, Virginia.
Gates.....	Virginia.
Halifax.....	Runner, Virginia.
Hertford.....	Virginia.
Martin.....	Runner, Virginia.
Nash.....	Virginia.
Northampton.....	Runner, Virginia.
Pitt.....	Virginia.
Washington.....	Do.

**OKLAHOMA**

Bryan.....	Southwest Spanish.
Caddo.....	Do.
Grady.....	Do.

**SOUTH CAROLINA**

Lee.....	Virginia.
Sumter.....	Do.

**TEXAS**

Atascosa.....	Southwest Spanish, Runner.
Brown.....	Do.
Comanche.....	Do.
Eastland.....	Do.
Erath.....	Do.
Fannin.....	Southwest Spanish.
Frio.....	Southwest Spanish, Runner.
Gaines.....	Southwest Spanish.
Grayson.....	Do.
Hood.....	Southwest Spanish, Runner.
Lee.....	Southwest Spanish.
Wilson.....	Southwest Spanish, Runner.

**VIRGINIA**

Dinwiddie.....	Virginia.
Greensville.....	Do.
Isle of Wight.....	Do.
Prince George.....	Do.
Southampton.....	Do.
Suffolk City.....	Do.
Surrey.....	Do.
Sussex.....	Do.

These regulations have been reviewed under the USDA criteria established to implement Executive Order No. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in

accordance with the Federal Reports Act of 1942, and OMB Circular No. A-40.

Approved by the Board of Directors on July 24, 1979.

Peter F. Cole,  
Secretary, Federal Crop Insurance Corporation.

Dated: November 19, 1979.

Approved by:

Roy L. Alton,  
Acting Manager.

[FR Doc. 79-36582 Filed 11-27-79; 8:45 am]

BILLING CODE 3410-08-M

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 3**

[Order No. 862-79]

**Board of Immigration Appeals; Editorial Amendment**

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** The last sentence of § 3.1(e) containing the reference to the time and location of the hearings conducted by the Board of Immigration Appeals is hereby deleted. This information is unnecessary and is therefore being taken out of Chapter I.

**EFFECTIVE DATE:** November 19, 1979.

**FOR FURTHER INFORMATION CONTACT:** William J. Snider, Administrative Counsel (202-633-3452), Department of Justice, Washington, D.C. 20530.

By virtue of the authority vested in me by 8 U.S.C. 1103, § 3.1(e) of Part 3, Subchapter A, Chapter I of Title 8 is hereby amended as follows:

**§ 3.1 Board of Immigration Appeals.**

\* \* \* \* \*

(e) *Oral argument.* Oral argument shall be heard by the Board, upon request, in any case over which the Board acquires jurisdiction by appeal or certification as provided in this part, except that oral argument shall not be heard on appeal from an order of a special inquiry officer under § 242.22 of this chapter denying a motion to reopen or reconsider or to stay deportation, unless the Board specifically directs that oral argument be granted. If an appeal has been taken, request for oral argument if desired, shall be included in the Notice of Appeal. The Board shall have authority to fix any date or change any date upon which oral argument is to be heard. The Service may be represented in argument before the Board by an officer of the Service designated by the Commissioner.

\* \* \* \* \*

Dated: November 19, 1979.

Benjamin R. Civiletti,  
Attorney General.

[FR Doc. 79-36851 Filed 11-27-79; 8:45 am]  
BILLING CODE 4410-01-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 206

[Reg. F; Docket No. R-0235]

#### Securities of State Member Banks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board hereby adopts amendments to its Regulation F, Securities of State Member Banks, (12 CFR Part 206), consistent with the recent amendments to comparable regulations of the Securities and Exchange Commission, concerning (A) Beneficial Ownership and Acquisition Statements, (B) Corporate Governance, (C) Management Remuneration, (D) Changes in Independent Auditor Fees, and (E) Simplification and Other Commission Amendments.

**EFFECTIVE DATE:** December 31, 1979.

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

**SUPPLEMENTARY INFORMATION:** On July 2, 1979, there was published in the Federal Register (44 FR 38543) a notice of proposed rulemaking to amend the Board's securities disclosure regulations in order to make them more similar to SEC regulations. Interested persons were given the opportunity to submit data, views, or arguments regarding the proposed amendments no later than August 22, 1979. All comments have been given due consideration. No substantive revisions were suggested by the comments.

The Board specifically requested comments on two provisions of the proposed proxy rules: the threshold amount requiring disclosure of personal benefits of management pursuant to Instruction 2(b)(ii) of Item 7(a) of Form F-5, as amended (12 CFR 206.51, Item 7(a), Instruction 2(b)(ii), as amended); and the threshold amount requiring disclosure of indebtedness of specified persons pursuant to Item 7(d) of Form F-5 (12 CFR 206.51).

As proposed by the Board, Item 7(a) of Form F-5 would exempt from the disclosure requirements relating to personal benefits, benefits that do not exceed \$5,000 for each specified person

and require that the bank file with the Board a statement of its practices and policies relating to such personal benefits. In the alternative, the Board considered adoption of provisions relating to disclosure of personal benefits that would be identical to those of the Commission. Those provisions would contain an exemption relating to personal benefits where such benefits do not exceed \$10,000 and if the board of directors of the registrant determines that their nondisclosure would not be a material omission from the filing. The Board specifically requested comment on whether it should adopt in final form Item 7 as it was proposed or, in the alternative, whether it should conform its proposal to that of the Commission as described above. After consideration of all comments received, the Board believes that a conditional threshold of \$10,000 and the filing of a statement will result in more meaningful disclosure of personal benefits. Therefore, the Board has adopted the conditional \$10,000 exemption threshold for disclosure of personal benefits.

The other provision on which the Board specifically requested comment, Instruction 2(d) of Item 7(e) of Form F-5, which will become Item 7(d), currently provides an exclusion from reporting the indebtedness of specified persons when such indebtedness does not exceed the lesser of 10 percent of equity capital or \$10 million. The Board proposed amending the instruction by lowering the dollar amount of such exemption to \$5 million while retaining the 10 percent of equity capital test. After consideration of all comments received, the Board has determined that the current threshold of \$10 million should not be changed.

The Board considered two other modifications to the proposed rules. First, the Board considered making the effective date of Item 6(g) of Form F-5, *Director Attendance*, as amended (12 CFR 206.51, Item 6(g), as amended), December 31, 1980, which would require disclosure of director absence from certain meetings in proxy statements mailed after January 1, 1981. However, the SEC did not delay the effective date of its comparable item. Therefore, the Board has decided that Item 6(g) of Form F-5 will be effective on the same date as the rest of this rule. Thus, director absence from certain meetings must be disclosed pursuant to Item 6(g) in proxy statements mailed after January 1, 1980. Second, the Board considered modifying Instruction 2 of Item 8(f) of Form F-5, *Relationship With Independent Public Accountants*, as amended (12 CFR 206.51, Item 8, Instruction 2, as

amended) by raising the exemption from disclosure of nonaudit fees from 3 percent of audit fees to 10 percent. The Board has heard no persuasive argument for raising the exemption percentage. Thus, Instruction 2 of Item 8(f) of Form F-5 retains the 3 percent disclosure exemption, which also has been adopted by the SEC. Finally, certain other technical amendments have been made for the purpose of either clarifying the proposal or further conforming it to the rules of the Commission.

Thus, the Board has adopted the proposal as published for comment, and 12 CFR Part 206 is amended as set forth below.

By order of the Board of Governors,  
November 21, 1979.

Theodore E. Allison,  
Secretary of the Board.

12 CFR Part 206 is amended as follows:

1. Section 206.4(h) of Regulation F is amended by revising subsections (3)-(5) and by adding subsection (6)-(8) to read as follows:

§ 206.4 Registration statements and reports.

\* \* \* \* \*

(h) \* \* \*

(3) (i) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a member State bank, of a class which is registered pursuant to Section 12 of the Act, (except nonvoting securities), is directly or indirectly the beneficial owner of more than 5 percent of such class shall, within 10 days after such acquisition, send to the bank at its principal executive office, by registered or certified mail, and to each exchange where the security is traded, and file with the Board, a statement containing the information required by Form F-11. Eight copies of the statement, including all exhibits, shall be filed with the Board.

(ii)(A) A person who would otherwise be obligated under paragraph (h)(3)(i) of this section to file a statement on Form F-11 may, in lieu thereof, file with the Board, within 45 days after the end of the calendar year in which such person became so obligated, eight copies, including all exhibits, of a short form statement on Form F-11A and send one copy each of such form to the bank at its principal executive office, by registered or certified mail, and to the principal national securities exchange where the security is traded: *Provided*, That it shall not be necessary to file a Form F-11A unless the percentage of the class of equity security beneficially-owned as of

the end of the calendar year is more than 5 percent: And *provided further*, That:

(1) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 206.4(h)(5)(i); and

(2) Such person is:

(i) A broker or dealer registered under section 15 of the Act;

(ii) A bank as defined in section 3(a)(6) of the Act;

(iii) An insurance company as defined in section 3(a)(19) of the Act;

(iv) An investment company registered under Section 8 of the Investment Company Act of 1940;

(v) An investment adviser registered under Section 203 of the Investment Advisers Act of 1940;

(vi) An employee benefit plan, or pension fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") or an endowment fund;

(vii) A parent holding company, provided the aggregate amount held directly by the parent, and directly and indirectly by its subsidiaries which are not persons specified in paragraphs (h)(3)(ii)(A)(2)(i) through (vii) of this section, does not exceed 1 percent of the securities of the subject class;

(viii) A group, provided that all the members are persons specified in paragraphs (h)(3)(ii)(A)(2)(i) through (vii) of this section; and

(3) Such person has promptly notified any other person (or group within the meaning of section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding 5 percent of the class, of any acquisition or transaction on behalf of such other person that might be reportable by that person under section 13(d) of the Act. This paragraph only requires notice to the account owner of information that the filing person reasonably should be expected to know and that would advise the account owner of an obligation he may have to file a statement pursuant to section 13(d) of the Act or an amendment thereto.

(B) Any person relying on paragraphs (h)(3)(ii)(A) and (h)(4)(ii)(B) of this section shall, in addition to filing any statements required thereunder, file a statement on Form F-11A, within ten days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds 10 percent of a class of equity securities specified in paragraph (h)(3)(i) of this section

computed as of the last day of the month, and thereafter within ten days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increases or decreases by more than 5 percent of such class of equity securities. Eight copies of such statement, including all exhibits, shall be filed with the Board and one each sent, by registered or certified mail, to the bank at its principal executive office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of 5 percent or less of the class of securities, no additional filings are required by this paragraph (ii)(B) unless the person thereafter becomes the beneficial owner of more than 10 percent of the class and is required to file pursuant to this provision.

(C)(1) Notwithstanding paragraphs (h)(3)(ii)(A) and (ii)(B) and (h)(4)(ii) of this section, a person shall immediately become subject to (h)(3)(i) and (h)(4)(i) of this section and shall promptly, but not more than ten days later, file a statement on Form F-11 if such person:

(i) Has reported that the person is the beneficial owner of more than 5 percent of a class of equity securities in a statement on Form F-11A pursuant to paragraph (ii)(A) or (ii)(B), or is required to report such acquisition but has not yet filed the form;

(ii) Determines that the person no longer has acquired or holds such securities in the ordinary course of business or not with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 206.4(h)(5)(ii); and

(iii) Is at that time the beneficial owner of more than 5 percent of a class of equity securities described in § 206.4(h)(3)(i).

(2) For the ten-day period immediately following the date of the filing of a Form F-11 pursuant to this paragraph (h)(3)(ii)(C), such person shall not: (i) Vote or direct the voting of the securities described in paragraph (h)(3)(ii)(C)(1)(i); nor, (ii) Acquire an additional beneficial ownership interest in any equity securities of the bank nor of any person controlling the bank.

(D) Any person who has reported an acquisition of securities in a statement on Form F-11A pursuant to paragraph (ii)(A) or (ii)(B) and thereafter ceases to be a person specified in paragraph (ii)(A)(2) shall immediately become subject to § 206.4(h)(3)(i) and

§ 206.4(h)(4)(i) and shall file, within ten days thereafter, a statement on Form F-11 in the event such person is a beneficial owner at that time of more than 5 percent of the class of equity securities.

(iii) Any person who, as of December 31, 1979, or as of the end of any calendar year thereafter, is directly or indirectly the beneficial owner of more than 5 percent of any equity security of a class specified in paragraph (h)(3)(i) of this section and who is not required to file a statement under paragraph (h)(3)(i) of this section by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act, or because such beneficial ownership was acquired prior to December 20, 1970, or because such person otherwise (except for the exemption provided by section 13(d)(6)(C) of the Act) is not required to file such statement, shall, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph, send to the bank at its principal executive office, by registered or certified mail, and file with the Board, a statement containing the information required by Form F-11A. Eight copies of the statement, including all exhibits, shall be filed with the Board.

(iv) For the purposes of sections 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the bank's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Board pursuant to this Act, unless he knows or has reason to believe that the information contained therein is inaccurate.

(v)(A) Whenever two or more persons are required to file a statement containing the information required by Form F-11 or Form F-11A with respect to the same securities, only one statement need be filed, provided that: (1) Each person on whose behalf the statement is filed is individually eligible to use the Form on which the information is filed;

(2) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(3) Such statement identifies all such persons, contains the required

information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their agreement in writing that such a statement is filed on behalf of each of them.

(B) A group's filing obligations may be satisfied either by a single joint filing or by each of the group's members making an individual filing. If the group's members elect to make their own filings, each such filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

(4)(i) *Form F-11*—If any material change occurs in the facts set forth in the statement required by § 206.4(h)(3)(i) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Board and send or cause to be sent to the bank at its principal executive office, by registered or certified mail, and to each exchange on which the security is traded an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to 1 per cent or more of the class of securities shall be deemed "material" for purposes of this rule; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. The requirement that an amendment be filed with respect to an acquisition which materially increases the percentage of the class beneficially owned shall not apply if such acquisition is exempted by Section 13(d)(6)(B) of the Act. Eight copies of each such amendment shall be filed with the Board.

(ii) *Form F-11A*—Notwithstanding paragraph (h)(4)(i) of this section, and provided that the person or persons filing a statement pursuant to § 206.4(h)(3)(ii) continues to meet the requirements set forth therein, any person who has filed a short form statement on Form F-11A shall amend such statement within 45 days after the end of each calendar year to reflect, as of the end of the calendar year any changes in the information reported in the previous filing on that Form, or if there are no changes from the previous filing, a signed statement to that effect under cover of Form F-11A. Eight copies of such amendment, including all exhibits, shall be filed with the Board and one each sent, by registered or certified mail, to the bank at its principal

executive office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of 5 per cent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than 5 per cent of the class and is required to file pursuant to § 206.4(h)(3).

Note.— For persons filing a short form statement pursuant to § 206.4(h)(3)(ii), see also § 206.4(h)(3)(ii)(B), (C), and (D).

(5)(i) For the purposes of section 13(d) and 13(g) of the Act, a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(A) voting power which includes the power to vote, or to direct the voting of, such security; and/or

(B) Investment power which includes the power to dispose or to direct the disposition of such security.

(ii) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of Section 13(d) or 13(g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

(iii) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

(iv) Notwithstanding the provisions of paragraphs (h)(5)(i) and (iii) of this section:

(A)(1) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (h)(5)(ii) of this section, if that person has the right to acquire beneficial ownership of such security, as defined in § 206.4(h)(3)(i), within 60 days, including but not limited to any right to acquire: (i) through the exercise of any option, warrant, or right; (ii) through the conversion of a security; (iii) pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or (iv) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires a security or power specified in paragraphs (h)(5)(iv)(A)(1)(i), (ii) or (iii) above, with

the purpose or effect of changing or influencing the control of the bank, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class by any other person.

(2) Paragraph (A)(1) remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in § 206.4(h)(3)(i) and may therefore give rise to a separate obligation to file.

(B) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(C) A person who in the ordinary course of business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised, provided that:

(1) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the bank, nor in connection with any transaction having such purpose or effect, including any transaction subject to § 206.4(h)(5)(ii);

(2) The pledgee is a person specified in § 206.4(h)(3)(ii)(A)(2), including persons meeting the conditions set forth in paragraph (h) thereof; and

(3) The pledgee agreement, prior to default, does not grant to the pledgee:

(j) The power to vote or to direct the vote of the pledged securities; or

(ii) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to Regulation T (12 CFR 220) and in which the pledgee is a broker or dealer registered under section 15 of the Act.

(D) A person engaged in business as an underwriter of securities who acquires securities through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933 shall not be deemed to be the beneficial owner of such securities until the expiration of 40 days after the date of such acquisition.

(6) Any person may expressly declare in any statement filed that the filing of such statement shall not be construed as an admission that such person is, for the purposes of section 13(d) or 13(g) of the Act, the beneficial owner of any securities covered by the statement.

(7)(i) A person who becomes a beneficial owner of securities shall be deemed to have acquired such securities for purposes of section 13(d)(1) of the Act, whether such acquisition was through purchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as such executors or administrators are qualified under local law to perform their duties.

(ii)(A) When two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a bank, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of section 13(d) and 13(g) of the Act, as of the date of such agreement, of all equity securities of that bank beneficially owned by any such persons.

(B) Notwithstanding the previous paragraph, a group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virtue of their concerted actions relating to the purchase of equity securities directly from a bank in a transaction not involving a public offering; provided that:

(1) All the members of the group are persons specified in § 206.4(h)(3)(ii)(A)(2);

(2) The purchase is in the ordinary course of each member's business and not with the purpose nor with the effect of changing or influencing control of the

bank, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 206.4(h)(5)(ii);

(3) There is no agreement among or between any members of the group to act together with respect to the bank or its securities except for the purpose of facilitating the specific purpose involved; and

(4) The only actions among or between any members of the group with respect to the bank or its securities subsequent to the closing date of the nonpublic offering are those which are necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

(8) The acquisition of securities of a bank by a person who, prior to such acquisition, was a beneficial owner of more than 5 per cent of the outstanding securities of the same class as those acquired shall be exempt from Section 13(d) of the Act, provided that:

(i) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(ii) Such person does not acquire additional securities except through the exercise of his pro rata share of the preemptive subscription rights; and

(iii) The acquisition is duly reported, if required, pursuant to Section 16(a) of the Act and the rules and regulations thereunder.

2. § 206.5(l) of Regulation F is amended as follows:

§ 206.5 Proxy statements and other solicitations under section 14 of the act.

(l) *Tender Offers* (1) No person, directly or indirectly by use of the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of any class of equity security, which is registered pursuant to Section 12 of the Act of any member State bank, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 percent of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Board a statement containing the information and exhibits required by Form F-13. The definition of beneficial owner set forth in 206.4(h)(5) for the purposes of Section 13(d)(1) of the Act

shall apply also for purposes of Section 14(d)(1) of the Act.

3. § 206.5(k) of Regulation F is amended by adding a new paragraph to read as follows:

(5) If management intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 206.5(f) or, in the event that the proposal must be revised in order to be included, not later than five calendar days after receipt by the bank of the revised proposal, promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of § 206.5(h) and the proponent wishes to bring this matter to the attention of the Board, the proponent should promptly provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide management with a copy of such letter.

§ 206.41 [Amended]

4. § 206.41, Form F-1, Item 8, Directors and Officers, is amended as follows:

*Item 8—Directors and Officers*

(a) The information required by Item 6(a)-(e) of § 206.51 shall be reported pursuant to this Item for both officers and directors. The term "officer" is defined in § 200.2(q).

(b) *Identification of certain significant employees.* Where the bank employs persons such as special consultants or attorneys who are not officers, but who make or are expected to make significant contributions to the business of the bank, such persons should be identified and their background disclosed to the same extent as in the case of officers.

(c) *Business experience.* When an officer or person named in response to paragraph (b), has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions in order to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

5. § 206.41, Form F-1 (Registration Statement), Item 10, Remuneration of Directors and Officers, and Item 13, Interest of Management and Others in Certain Transactions, are combined into a new Item 10, Remuneration and Other

Transactions With Management and Others, and reads as follows:

*Item 10—Remuneration and other transactions with management and others*

(a) The information required by Item 7(a), (b), (d), (e), (f) and (g) of Form F-5 at § 206.51 shall be reported pursuant to this Item. The information required by Item 7(d), (e) and (f) of Form F-5 at § 206.51 shall be reported for the past three years.

(b) If the bank was organized within the past five years, furnish the following information:

(1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter directly or indirectly from the bank, and the nature and amount of any assets, services or other consideration therefor received or to be received by the bank.

(2) As to any assets acquired or to be acquired by the bank from a promoter, state the amount at which acquired or to be acquired and the principle followed, or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the bank or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the bank, state the cost thereof to the promoter.

6. 206.41, Form F-1 (Registration Statement), Item 11, Management Options to Purchase Securities, is amended as follows:

*Item 11—Management Options to Purchase Securities*

The information required by Item 7(c) of Form F-5 at § 206.51 shall be reported pursuant to this Item.

7. § 206.41, Form F-1 (Registration Statement), Item 12, Principal Holders of Securities, is retitled, Security Ownership of Certain Beneficial Ownership and Management, and is amended as follows:

*Item 12—Security Ownership of Certain Beneficial Owners and Management*

The information required by Items 5 (d), (e) and (g) of Form F-5 at § 206.51, shall be reported pursuant to this Item.

8. § 206.41, Form F-1 (Registration Statement), Items 14-20 are redesignated Items 13-19, respectively.

§ 206.42 [Amended]

9. § 206.42, Form F-2 (Annual Report), Item 6, Directors of Bank, is amended as follows:

*Item 6—Directors of Bank*

See General Instruction G. Set forth the same information as is required by Item 6(a), (d), and (e) of Form F-5 at § 206.51. *Note*—This information need not be included for nominees for election as directors.

10. In § 206.42, Form F-2 (Annual Report), Item 7, Remuneration of

Directors and Officers, is revised to read as follows:

*Item 7—Remuneration of Director and Officers and Related Matters*

See General Instruction G. Set forth the same information as to remuneration of officers and directors and their transactions with management and others as is required to be furnished by Item 7(a) and (b) of Form F-5 at § 206.51.

11. In § 206.42, Form F-2 (Annual Report), Item 11, Officers of the Bank, is revised to read as follows:

*Item 11—Officers of Bank*

See General Instruction G. Set forth the same information as to officers of bank as is required to be furnished by Item 6(a)-(g) of Form F-5 at § 206.51. When an officer has been employed by the bank or a subsidiary of the bank for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions in order to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

12. In § 206.42, Form F-2 (Annual Report), Item 13, Options Granted to Management to Purchase Securities, is revised to read as follows:

*Item 13—Options Granted to Management To Purchase Securities*

See General Instruction G. Set forth the same information as to options granted to management to purchase securities as is required to be furnished by Item 7(c) of Form F-5 at § 206.51.

13. In § 206.42, Form F-2 (Annual Report), Item 14, Interest of Management and Others in Certain Transactions, is revised to read as follows:

*Item 14—Interest of Management and Others in Certain Transactions*

See General Instruction G. Set forth the same information as to the interest of management and others in certain transactions as is required to be furnished by Item 7 (d), (e) and (f) of Form F-5 at § 206.51.

§ 206.43 [Amended]

14. Section 206.43, Form F-3 (Current Report), Item 4, Changes in Bank's Accountant, is amended by adding a new paragraph (e) which reads as follows:

(e) State whether the decision to change accountants was recommended or approved by:

(1) Any audit or similar committee of the Board of Directors, if the bank has such a committee; or

(2) The Board of Directors, if the bank has no such committee.

15. Section 206.43, Form F-3 (Current Report), is amended by adding a new Item 5, Resignation of Bank's Directors, which reads as follows:

*Item 5—Resignations of Bank's Directors*

(a) If a director has resigned or declined to stand for re-election to the Board of Directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of such resignation or declination to stand for re-election and summarize the director's description of the disagreement.

(b) If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

(c) The bank shall file a copy of the director's letter as an exhibit with all copies of this Form F-3.

16. Section 206.43, Form F-3 (Current Report), Present Item 5, Other Materially Important Events, is renumbered Item 6. Present Item 6, Financial Statements and Exhibits, is renumbered Item 7, and reads as follows:

*Item 7—Financial Statements and Exhibits*

\* \* \* \* \*

(b) *Exhibits.* Subject to the rules as to incorporation by reference, the following documents shall be filed as exhibits to this report.

1. Copies of any plan of acquisition or disposition described in answer to Item 2, including any plan of reorganization, readjustment, exchange, merger, consolidation or succession in connection therewith.

2. Letters from directors furnished pursuant to Item 5.

§ 206.44 [Amended]

17. § 206.44, Form F-4 (Quarterly Report), Item 7, Submission of Matters to a Vote of Security Holders, is amended by adding a new paragraph (d) and Instruction 6 that reads as follows:

*Item 7—Submission of Matters to a Vote for Security Holders*

\* \* \* \* \*

(D) Describe the terms of any settlement between the bank and any other participant (as defined in § 206.5(i)) terminating any solicitation subject to § 206.5(i) including the cost or anticipated cost to the bank.

*Instructions* \* \* \*

6. If the bank has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

18. Section 206.47, Form F-11, is revised as follows:

**§ 206.47 Form for acquisition statement filed pursuant to § 206.4(h)(3) and amendments thereto filed pursuant to § 206.4(h)(4) of regulation F.**

**Board of Governors of the Federal Reserve System**

**Form F-11**

Acquisition statement to be filed pursuant to § 206.4(h)(3) or § 206.4(h)(4) of Regulation F (Amendment No. ).

(Name and Address of Bank)

(Title of Class of Securities)

(CUSIP Number)

(Name, Address and Telephone Number or Person Authorized to Receive Notices and Communications)

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Form F-11A, and is filing this form because of § 206.4(h)(3) (ii)(C) or (D), check the following box [ ].

Note: Eight copies of this form, including all exhibits, should be filed with the Board. See § 206.4(h)(3)(i) for other parties to whom copies are to be sent.

**Special Instructions for Complying With Form F-11**

Under Sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Board is authorized to solicit the information required to be supplied by this form by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

**General Instructions**

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or

sub-item of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required.

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2-6, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is demonstrated as a general partner who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. Executive officer shall mean the president, secretary, treasurer, and any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs or has the power to perform similar policy making functions for the corporation.

**Item 1—Security and Bank**

State the title of the class of equity securities to which this statement relates and the name and address of the principal office of the bank.

**Item 2—Identity and Background**

If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (d) and (e) of this item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (f) of this Item with respect to such person(s).

- (a) Name;
- (b) Residence or business address;
- (c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted;
- (d) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case.
- (e) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result

of such proceeding was or is subject to a judgment, decree or final order enjoining future violation of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws; and, if so, identify and describe such proceedings and summarize the terms of such judgment, decree or final order; and

(f) Citizenship.

**Item 3—Source and Amount of Funds or Other Consideration**

State the source and the amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties thereto. Where material, such information should also be provided with respect to prior acquisitions not previously reported pursuant to this regulation. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of the Act, the name of the bank shall not be made available to the public if the person at the time of filing the statement so requests in writing and files such request, naming such bank with the Board. If the securities were acquired other than by purchase, describe the method of acquisition.

**Item 4—Purpose of Transaction**

State the purpose or purposes of the acquisition of securities of the bank. Describe any plans or proposals which the reporting persons may have which relate to or would result in:

- (a) The acquisition by any person of additional securities of the bank, or the disposition of securities of the bank;
- (b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the bank or any of its subsidiaries;
- (c) A sale or transfer of a material amount of assets of the bank or of any of its subsidiaries;
- (d) Any change in the present board of directors or management of the bank, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;
- (e) Any material change in the present capitalization or dividend policy of the bank;
- (g) Changes in the bank's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the bank by any person;
- (h) Causing a class of securities of the bank to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;
- (i) A class of equity securities of the bank becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Act; or
- (j) Any action similar to any of those enumerated above.

**Item 5—Interest in Securities of the Bank**

(a) State the aggregate number and percentage of the class of securities identified pursuant to Item 1 (which may be based on the number of securities outstanding as contained in the most recently available filing with the Board by the bank unless the filing person has reason to believe such information is not current) beneficially owned (identifying those shares which there is a right to acquire) by each person named in Item 2. This mentioned information should also be furnished with respect to persons who, together with any of the persons named in Item 2, comprise a group within the meaning of Section 13(d)(3) of the Act;

(b) For each person named in response to paragraph (a), indicate the number of shares as to which there is sole power to vote or to direct the vote, shared power to vote or to direct the vote, sole power to dispose or to direct the disposition, or shared power to dispose or to direct the disposition. Provide the applicable information required by Item 2 with respect to each person with whom the power to vote or to direct the vote or to dispose or direct the disposition is shared;

(c) Describe any transactions in the class of securities reported on that were effected during the past sixty days or since the most recent filing on Form F-11, whichever is less, by the persons named in response to paragraph (a).

*Instruction.* The description of a transaction required by Item 5(c) shall include, but not necessarily be limited to: (1) the identity of the person covered by Item 5(c) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share or unit; and (5) where and how the transaction was effected.

(d) If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified.

(e) If applicable, state the date on which the reporting person ceased to be the beneficial owner of more than five percent of the class of securities.

*Instruction.* For computations regarding securities which represent a right to acquire an underlying security, see § 206.4(h)(5)(iv) and the note thereto.

**Item 6—Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Bank**

Describe any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the bank, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees or profits, division of profits or losses, or the giving or withholding of proxies, and name the persons with whom such contracts, arrangements, understandings or relationships have been entered into. Include such information for any of the

securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

**Item 7—Material To Be Filed as Exhibits**

The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by § 206.4(h)(g)(v) and copies of all written agreements, contracts, arrangements, understandings, plans, or proposals relating to: (1) The borrowing of funds to finance the acquisition as disclosed in Item 3; (2) the acquisition of bank control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in Item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in Item 6.

**Signature**

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct:

Date \_\_\_\_\_

Signature \_\_\_\_\_

Name/Title \_\_\_\_\_

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Board may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

19. Form F-11A is added to section 206.48 and reads as follows:

§ 206.48 Short Form for statement filed pursuant to section 206.4(h)(3) and amendments thereto filed pursuant to § 206.4(h)(4) of Regulation F (Form F-11A).

Board of Governors of the Federal Reserve System  
Washington, D.C. 20551.

FORM F-11A

Short Form Ownership Statement to be Filed Pursuant to § 206.4(h)(3) or 206.4(h)(4) (Amendment No. )

(Name and Bank) \_\_\_\_\_

(Title of Class of Securities) \_\_\_\_\_

(CUSIP Number) \_\_\_\_\_

**Special Instructions for Complying With Form F-11A**

Under Sections 13(d), 13(g), and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Board is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain banks.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers the disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

**General Instructions**

A. Statements containing the information required by this Form shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in § 335.4(h)(2)(ii)(B), if applicable.

B. Information contained in a form which is required to be filed by the Securities and Exchange Commission's rules under Section 13(f) of the Act [15 U.S.C. 78m(f)] for the same calendar year as that covered by a statement on this Form may be incorporated by reference in response to any of the items of this Form. If such information is incorporated by reference in this Form, copies of the relevant pages of such form shall be filed as an exhibit to this Form.

C. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1(a) Name of Bank: \_\_\_\_\_

Item 1(b) Address of Bank's Principal Office: \_\_\_\_\_

Item 2(a) Name of Person Filing: \_\_\_\_\_

Item 2(b) Address of Principal Business Office or, if none, Residence: \_\_\_\_\_

Item 2(c) Citizenship: \_\_\_\_\_

Item 2(d) Title of Class of Securities: \_\_\_\_\_

Item 3 If this statement is filed pursuant to § 206.4(h)(3)(i) or 206.4(h)(4)(ii) check whether the person filing is a:

(a)  Broker or Dealer registered under Section 15 of the Act.

(b)  Bank as defined in Section 3(a)(6) of the Act.

(c)  Insurance Company as defined in Section 3(a)(19) of the Act.

- (d) [ ] Investment Company registered under Section 8 of the Investment Company Act.
- (e) [ ] Investment Adviser registered under Section 203 of the Investment Advisers Act of 1940.
- (f) [ ] Employee Benefit Plan, Pension Fund which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or Endowment Fund.
- (g) [ ] Parent Holding Company, in accordance with § 206.4(h)(3)(ii)(A)(2)(g) (Note: See Item 7).
- (h) [ ] Group, in accordance with § 206.4(h)(3)(ii)(A)(2)(h).

**Item 4—Ownership**

If the percent of the class owned, as of December 31 of the year covered by the statement, or as of the last day of any month described in § 206.4(h)(3)(B) if applicable, exceeds five percent, provide the following information as of that date and identify those shares for which there is a right to acquire.

- (a) Amount beneficially owned.
- (b) Per cent of class.
- (c) Number of shares as to which such person has:
  - (i) Sole power to vote or to direct the vote.
  - (ii) Shared power to vote or to direct the vote.
  - (iii) Sole power to dispose or to direct the disposition of.
  - (iv) Shared power to dispose or to direct the disposition of.

*Instruction:* For computations regarding securities which represent a right to acquire an underlying security see § 206.4(h)(5)(iv)(A).

**Item 5—Ownership of Five Per Cent or Less of a Class**

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five per cent of the class of securities, check the following [ ].

*Instructions:* Dissolution of a group requires a response to this item.

**Item 6—Ownership of More Than Five Per Cent on Behalf of Another Person**

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five per cent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

**Item 7—Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company**

If a parent holding company has filed this schedule, pursuant to § 206.4(h)(3)(ii)(A)(2)(g), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company has filed this schedule pursuant to § 206.4(h)(2)(ii), attach

an exhibit stating the identification of the relevant subsidiary.

**Item 8—Identification and Classification of Members of the Group**

If a group has filed this schedule pursuant to § 206.4(h)(3)(ii)(A)(2)(h), so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to § 206.4(h)(3)(iii), attach an exhibit stating the identity of each member of the group.

**Item 9—Notice of Dissolution of Group**

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group in their individual capacity. See Item 5.

**Item 10—Certification**

The following certification shall be included if the statement is filed pursuant to § 206.4(h)(3)(ii).

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the bank and were not acquired in connection with or as a participant in any transaction having such purposes or effect.

Signature \_\_\_\_\_

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Name/Title \_\_\_\_\_

The original statement shall be signed by each person on whose behalf the statement is filed, or by his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Note.—Eight copies of this statement, including all exhibits, should be filed with the Board.

**§ 206.51 [Amended]**

20. § 206.51, Form F-5 (Proxy Statement), Item 3, Persons Making the Solicitation, is amended as follows:

**Item 3—Persons Making the Solicitation**

- (a) \* \* \*
- (b) \* \* \*
- (c) If any such solicitation is terminated pursuant to a settlement between the bank

and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the bank.

*Instructions.* 1. \* \* \*

2. The information required pursuant to paragraph (b)(6) of this Item should be included in any amended or revised proxy statement or other soliciting material relating to the same meeting or subject matter furnished to security holders by the bank subsequent to the date of settlement.

21. § 206.51, Form F-5 (Proxy Statement), Item 5, Voting Securities and Principal Holders Thereof, is amended as follows:

**Item 5—Voting Securities and Principal Holders Thereof**

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*

(d) *Security ownership of certain beneficial owners.* Furnish the following information as of the most recent practicable date in substantially the tabular form indicated, with respect to any person (including any "group" as the term is used in Section 13(d)(3) of the Securities Exchange Act of 1934) who is known to the bank to be the beneficial owner of more than five per cent of any class of the bank's securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount of shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in § 206.4(h)(5)(iv)(A).

- (1) Title of Class \_\_\_\_\_
- (2) Name and Address of Beneficial Owner — \_\_\_\_\_
- (3) Amount of and Nature of Beneficial Ownership \_\_\_\_\_
- (4) Percent of Class \_\_\_\_\_

(e) *Security ownership of management.* Furnish the following information, as of the most recent practicable date in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, and directors and officers of the bank as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and Column (3) the per cent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 206.4(h)(5)(iv)(A).

- (1) Title of Class \_\_\_\_\_
- (2) Amount and Nature of Beneficial Ownership \_\_\_\_\_
- (3) Per cent of Class \_\_\_\_\_

(f) *Recent change in control.* If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the bank has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person(s), the basis of the control, the date and a description of the transaction(s) which resulted in the change of

control, the percentage of voting securities of the bank now beneficially owned directly or indirectly by the person(s) who acquired control, and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate the identity of the bank so omitted and shall be filed separately with the Board. If the source of all or any part of the funds used to acquire control of the bank was a loan made by a bank as defined by section 3(a)(6) of the Act indicate whether there exists any agreement, arrangement or understanding pursuant to which the bank maintains or would maintain a correspondent deposit account at such lending bank.

**Instructions.** 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to the election of directors and other matters should be described.

(g) *Anticipated change in control.* Describe any arrangements, known to the bank, including any pledge by any person of securities of the bank or any of its parents, the operation of which may at a subsequent date result in a change in control of the bank. A description is not required of ordinary default provisions contained in any charter, trust indentures or other governing instruments relating to securities of the bank.

**Instructions to Item 5 (d), (e), and (f).** 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 206.4(h)(5)(iv)(A).

2. For the purposes of this item, beneficial ownership shall be determined in accordance with § 206.4(h)(5). Include such additional subcolumns or any other appropriate explanation of Column (3) necessary to reflect amounts as to which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, and (4) shared investment power.

3. The bank shall be deemed to know the contents of any statement filed with the Board pursuant to section 13(d) of the Act. When applicable, a bank may rely upon information set forth in such statements unless the bank knows or has reason to believe that such information is not complete or accurate, or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

22. § 206.51, Form F-5 (Proxy Statement), Item 6, Nominees and Directors, is retitled Directors, and amended as follows:

*Item 6—Directors and Officers*

If action is to be taken with respect to election of directors, furnish the following information in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting. However, if the solicitation is made on behalf of persons other than management, the information required need only be furnished as to nominees of the persons making the solicitation.

(a) *Identification of directors.* List all directors of the bank and all persons nominated or chosen to become directors. Indicate all positions and offices with the bank held by each person named. State the age of the persons named, their terms of office, and the periods during which each such person has served. Briefly describe any arrangement or understanding between each director and any other person pursuant to which such director was selected to serve in that capacity.

*Instructions*

(1) Do not include any arrangements or understandings with directors of the bank acting solely in their capacities as such.

2. No nominee or person chosen to become a director or who has not consented to act as such should be named in response to this item. In this regard, see § 206.5(d).

3. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. In connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

(b) *Family relationships.* State the nature of any family relationships between any director, officer, or person nominated or chosen by the bank to become a director or officer.

*Instruction.* The term "family relationships" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director or person nominated or chosen to become a director, including principal occupations and employment during that period, and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. (2) Indicate any other directorship held by each director or person chosen to become a director in any company with a class of securities registered pursuant to Section 12 of the Act.

(d) *Involvement in certain legal proceedings.* Describe any of the following events which occurred during the past five years and which are material to an

evaluation of the ability or integrity of any director or person chosen or nominated to become a director of the bank:

(1) A petition under the Bankruptcy Act or any state insolvency law was filed by or against such person, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of federal or state securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action, or by a government agency, to have violated any federal or state securities law, and the judgment in such civil action or finding by the government agency has not been subsequently reversed, suspended, or vacated.

*Instructions.* 1. For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this subparagraph (e) has occurred and information in regard thereto is omitted on the ground that it is not material, the bank may furnish to the Board at the time of filing, as supplemental information and not as part of the statement, materials to which the omission relates, a description of the event, and a statement of the reasons for the omission of information in regard thereto.

3. The bank is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by Item 6(e) is being presented in a proxy or information statement, no information need be given respecting any director whose term in office as director will not continue after the meeting to which the statement relates.

(e) Describe any of the following relationships which exist:

(1) If the nominee or director has during the past five years had a principal occupation or employment with any of the bank's parents, subsidiaries or other affiliates;

(2) If the nominee or director is related to an officer of any of the bank's parents, subsidiaries or other affiliates by blood, marriage or adoption (except relationships more remote than first cousin);

(3) If the nominee or director is, or has within the last two full fiscal years been, an officer, director or employee of, or owns, or has within the last two full fiscal years owned, directly or indirectly, in excess of 1 percent equity interest in any firm, corporation or other business or professional entity;

(i) Which has made payments to the bank or its subsidiaries for property or services during the bank's last full fiscal year in excess of 1 percent of the bank's consolidated gross revenues for its last full fiscal year;

(ii) Which proposes to make payments to the bank or its subsidiaries for property or services during the current fiscal year in excess of 1 percent of the bank's consolidated gross revenues for its full fiscal year;

(iii) To which the bank or its subsidiaries were indebted at any time during the bank's fiscal year in an aggregate amount in excess of 1 percent of the bank's total consolidated assets at the end of such fiscal year or \$5,000,000, whichever is less;

(iv) To which the bank or its subsidiaries have made payments for property or services during such entity's last full fiscal year in excess of 1 percent of such entity's gross revenues for its last full fiscal year;

(v) To which the bank or its subsidiaries propose to make payments for property or services during such entity's current fiscal year in excess of 1 percent of such entity's consolidated gross revenues for its last full fiscal year;

(vi) In order to determine whether payments made or proposed to be made exceed 1 percent of the consolidated gross revenues of any entity other than the bank for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director;

(vii) In calculating payments for property and services the following may be excluded:

(A) Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a public utility at rates or charges fixed in conformity with law or governmental authority;

(B) Payments which arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

(viii) In calculating indebtedness for purposes of subparagraph (iii) above, debt securities which have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association may be excluded.

(4) That the nominee or director is a member or employee of, or is associated with, a law firm which the bank has retained in the last two full fiscal years or proposes to retain in the current fiscal year;

(5) That the nominee or director is a control person of the bank (other than solely as a director of the bank).

(6) In addition, the bank should disclose any other relationships it is aware of between the director or nominee and bank or its management which are substantially similar in nature and scope to those relationships listed above.

Note.—In the Board's view, where significant business or personal relationships exist between the director or nominee and the bank or its management, including, but not limited to, those as to which disclosure would be required pursuant to item 6(b), characterization of a director or nominee by any "label" connoting a lack of relationship to the issuer and its management may be materially misleading.

(f) *Committees.* (1) State whether or not the bank has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the bank has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees.

(2)(a) If the bank has a nominating or similar committee, state whether the committee will consider nominees recommended by shareholders and, if so;

(b) Describe the procedures to be followed by shareholders in submitting such recommendations.

(g) *Director Attendance.* State the total number of meetings of the Board of Directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1)

the total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(h) *Resignation of Directors.* If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the bank on any matter relating to the bank's operations, policies or practices, and if the director has furnished the bank with a letter describing such disagreement and requesting that the matter be disclosed, the bank shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

(i) If the bank believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

23. § 206.51, Form F-5 (Proxy Statement), Item 7, Remuneration and Other Transactions With Management and Others, is amended as follows:

*Item 7—Remuneration and Other Transactions With Management and Others.*

Furnish the information called for by this item if action is to be taken with respect to (i) the election of directors, (ii) any bonus, profit sharing or other remuneration plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a) *Current remuneration.* Furnish the information required in the table below, in substantially the tabular form as specified, concerning all remuneration of the following persons and group for services in all capacities to the bank during the bank's last fiscal year.

(1) *Five officers or directors.* Each of the five most highly compensated officers or directors of the bank as to whom the total remuneration required to be disclosed in Columns C1 and C2, below, would exceed \$50,000, naming each such person; and

(2) *All officers and directors.* All officers and directors of the bank as a group, stating the number of persons in the group without naming them.

Remuneration Table

(A) Name of individual or number of persons in group	(B) Capacities in which served	(C) Cash and cash-equivalent forms of remuneration		(D) Aggregate of contingent forms of remuneration
		(C1)	(C2)	
		Salaries, fees directors' fees, commissions, and bonuses	Securities or property, insurance benefits or reimbursement, personal benefits	

**(3) Specified Tabular Format**

**Instructions to Item 7(a). 1. Column A and B. Persons subject to this item.** (a) This item applies to any person who was an officer or director of the bank at any time during the fiscal year. However, information need not be given for any portion of the period during which such person was not an officer or director of the bank, provided a statement to that effect is made. (b) The term officer is defined in § 206.2(g). (c) For the purposes of this item "bank" shall include the bank and all its subsidiaries.

**2. Column C.** (a) Column C1 shall include all cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses.

(b) Column C2 shall include the following: (i) **Securities or property.** Where any of the specified persons or group (a) exercises any option, right or similar election in connection with any contract, agreement, plan or arrangement, or (b) becomes entitled without further contingencies to retain securities or property, state the spread between the acquisition price, if any, and the fair market price of all securities or property acquired under any contract, agreement, plan or arrangement. The fair market price of any such securities or property shall be determined as of the date during the fiscal year that either of the events in (a) or (b) of this paragraph occurs, or if both events are contemplated, the date of the latter event.

(ii) **Personal benefits.** (A) The value of personal benefits which are not directly related to job performance, which are furnished by the bank directly or through third parties to each of the specified persons and group, or benefits furnished by the bank to other persons which indirectly benefit the specified persons. Such personal benefits shall include the costs of any premiums or benefits paid by the bank for any life or health insurance policy or health plan of which bank is not the sole beneficiary. (B) Such benefits shall be valued on the basis of the aggregate actual cost to the bank. Information need not be furnished for any such benefit provided by the bank which does not discriminate in favor of officers or directors and which is available generally to all salaried employees. (C) If the bank cannot determine without unreasonable effort or expense the specific amount of certain personal benefits, or the extent to which benefits are personal rather than business, the amount of such personal benefits may be omitted from the table provided that, after reasonable inquiry, the bank has concluded that the aggregate amounts of such personal benefits that cannot be specifically or precisely ascertained do not in any event exceed \$10,000 as to each person or, in the case of a group, \$10,000 for each person in the group and has concluded that the information set forth in the table is not rendered materially misleading by virtue of the omission of the value of such personal benefits.

**3. Column D.** Column D shall include remuneration of the specified persons and

group in whole or in part for services rendered during the latest fiscal year (including the forms of remuneration described in paragraph (a) through (c) below) if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events.

(a) **Pensions or retirement plans; annuities; employment contracts; deferred compensation plans.**

(i) As to each of the specified persons and group, the amount expended for financial reporting purposes by the bank for the year which represents the contribution, payment, or accrual for the account of any such person or group under any existing pension or retirement plans, annuity contracts, deferred compensation plans, or any other similar arrangements. Such amounts should be reflected as remuneration for the fiscal year under all such plans or arrangements, including plans qualified under the Internal Revenue Code, unless in the case of a defined benefit or actuarial plan, the amount of the contribution, payment, or accrual in respect to a specified person is not and cannot readily be separately or individually calculated by the regular actuaries for the plan.

(ii) If amounts are excluded from the table pursuant to the previous provision, include a footnote to the table: (a) stating the fact; (b) disclosing the percentage which the aggregate contributions to the plan bear to the total remuneration of plan participants covered by such plan; and (c) briefly describing the remuneration covered by the plan.

(b) **Incentive and compensation plans and arrangements.**

(i) With respect to stock options, stock appreciation rights plans, phantom stock plans and any other incentive or compensation plan or arrangement pursuant to which the measure of benefits is based on objective standards or on the value of securities of the bank or another person granted, awarded or entered into at any time in connection with services to the bank, include as remuneration of each of the specified persons and group any attributable amount expended by the bank for financial reporting purposes for the fiscal year as remuneration for any such person or group.

(ii) Where amounts are expended and reported in the remuneration table, and amounts are credited in a subsequent year in connection with the same plan or arrangement for any proper reason including a decline in the market price of the securities, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited are reflected in the table, include a footnote stating the amount of the credit and briefly describe such treatment.

(iii) The term "options" as used in this item includes all options, warrants, or rights, other than those issued to security holders as such on a pro rata basis.

(c) **Stock purchase plans; profit sharing and thrift plans.** Include the amount of any

contribution, payment or accrual for the account of each of the specified persons and groups under any stock purchase, profit sharing, thrift, or similar plans which has been expensed during the fiscal year by the bank for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded.

4. **Other permitted disclosure.** The bank may provide additional disclosure through a footnote to the table, through additional columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

5. **Definition of "Plan."** The term "plan" as used in this item includes all plans, contracts, authorizations, or arrangements whether or not set forth in any formal documents.

6. **Transactions with third parties.** Item 7(a), among other things, includes transactions between the bank and a third party when the primary purposes of the transaction is to furnish remuneration to the persons specified in Item 7(a). Other transactions between the bank and third parties in which persons specified in Item 7(a) have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interest of management and others in certain transactions. Item 7(a) does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions should be disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to Item 7(a).

**[End of Instructions to Item 7(a)]**

(b) **Proposed remuneration.** Briefly describe all remuneration payments proposed to be made in the future pursuant to any existing plan or arrangement to the persons and group specified in Item 7(a). As to defined benefit or actuarial plans, with respect to which amounts are not included in the table pursuant to Instruction 3(a) to Item 7(a), include a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classification.

**Instruction.** Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the bank and which are available generally to all salaried employees.

(c) **Options, warrants, or rights.** Furnish the following information as to all options to purchase any securities from the bank which were granted to or exercised by the following persons since the beginning of the bank's last fiscal year, and as to all options held by such persons as of the latest practicable date: (i) each director or officer named in answer to paragraph (a)(1), naming each such person; and (ii) all directors and officers of the bank as a group, without naming them:

(1) As to options granted during the period specified state: (i) the title and aggregate amount of securities called for; (ii) the average option price per share; and (iii) if the option price was less than 100 percent of the market value of the security on the date of grant, state such fact, and the market price on such date, shall be disclosed.

(2) As to options exercised during the period specified, state (i) the title and aggregate amount of securities purchased; (ii) the aggregate purchase price; and (iii) the aggregate market value of the securities purchased on the date of purchase.

(3) As to all unexercised options held as of the latest practicable date (state date), regardless of when such options were granted, state (i) the title and aggregate amount of securities called for, and (ii) the average option price per share.

*Instructions.* 1. The term "options" as used in this paragraph (c) includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

2. The extension, regranting or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed \$10,000 for any officer or director named in answer to paragraph (a)(1), or \$40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such persons or group. (ii) Where the total market value on the dates of purchases of all securities purchased through the exercise of options during the period specified does not exceed \$10,000 for any such period or \$40,000 for such group, this item need not be answered with respect to options exercised by such person or group. (iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed \$10,000 for any such person or \$40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

4. If the options relate to more than one class of securities the information shall be given separately for each such class.

(d) *Indebtedness of management.* (1) State as to each of the following persons, herein called specified persons, who was indebted to the bank at any time since the beginning of its last fiscal year: (i) the largest aggregate amount of indebtedness, including extensions of credit or overdrafts, endorsements or guarantees outstanding (in dollar amounts and as a percentage of total equity capital accounts at the time) at any time during such period; (ii) the amount thereof outstanding as of the latest practicable date; (iii) the nature of the indebtedness and of the transaction in which it was incurred; and (iv) the rate of interest paid or charges thereon:

(A) each director or officer of the bank;

(B) each nominee for election as director;

(C) each security holder who is known to bank to own of record or beneficially more

than five percent of any class of the bank's voting securities;

(D) each associate of any such director, officer, nominee or principal security holder.

*Instructions.* 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this Item 7(d), unless any of the following is present:

(a) such extensions of credit are not made on substantially the same terms, including interest rates, collateral and repayment terms, as those prevailing at the time for comparable transactions with other than the specified persons.

(b) such extensions of credit were not made in the ordinary course of business.

(c) such extensions of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit or a delinquency as to payment of interest or principal.

(d) the aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), and (C) of this paragraph (d)(1) together with the persons' associates exceeded 10% of the equity capital accounts of the bank at that time or \$10 million, whichever is less.

*NOTE.*—For purposes of this Instruction 2(d) only: (1) The information called for by paragraphs (d)(1)(iii) and (iv) of this Item 7 need not be furnished; (2) A principal security holder shall mean each security holder known to the bank to own or record or beneficially more than ten (10) per cent of any class of the bank's voting securities; and (3) The name of associate need not be furnished.

(2) If any extension of credit to the specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last full fiscal year to date, disclose the maximum aggregate amount of extensions of credit to the group during the period, the aggregate amount as a percentage of the equity capital accounts of the bank and include a statement, to the extent applicable, that the bank has had, and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders and their associates, on substantially the same terms, including interest rates, collateral and repayment terms on extensions of credit, as those prevailing at the same time for comparable transactions with others.

3. If any indebtedness required to be described arose under Section 16(b) of the Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

4. Notwithstanding the foregoing, any transaction or series of transactions resulting

in indebtedness to the bank or its subsidiaries which may be considered material should be disclosed.

5. If the information called for by Item 7(d) is being presented in Form F-1, § 208.41, the information called for shall be presented for the last three full fiscal years.

(e) *Transactions With Management.* Describe briefly any transaction since the beginning of the bank's last full fiscal year or any presently proposed transactions, to which the bank or any of its subsidiaries was or is to be a party, in which any of the specified persons in Item 7(d) had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest.

*Instructions.* 1. No information need be given in response to this Item 7(e) as to any remuneration or other transaction reported in response to Item 7(a), (b), (c) or (d), or as to any transaction with respect to which information may be omitted pursuant to Instruction 2 to Item 7(c) or Instruction 2 or 3 to Item 7(d). Instruction 2 to Item 7(a) applies to this Item 7(e).

2. No information need be given in answer to this Item 7(e) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under an indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed \$40,000 for the term of each transaction or series of transactions; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 7(e) where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 per cent equity interest in another person (other than a partnership) which is a

party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 per cent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transactions with the bank and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction will be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof, to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the person making this determination.

6. If the information called for by this Item 7(e) is being presented in Form F-1, § 206.41, the period for which the information called for shall be presented for the previous three years.

7. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

8. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 per cent of any class of equity securities of another corporation furnishing the services to the bank.

9. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a mutual interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(f) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last full fiscal year or any presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any of the specified persons in Item 7(d) had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest.

*Instructions.* 1. Instructions 2, 3, 4 and 5 to Item 7(e) shall apply to this Item 7(f).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this Item 7(f) any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (f) with respect to:

(a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) Payment of remuneration for services not in excess of 5 per cent of the aggregate remuneration received by the specified person during the bank's last fiscal year from the bank; or

(c) Any interest of the bank which arises solely from its general interest in the success of the plan.

(g) *Legal Proceedings.* Any material proceedings to which any director, officer or affiliate of the bank, and persons holding in excess of five per cent of the bank's outstanding stock, or any associate of any such director, officer or security holder, is a party or has an interest materially adverse to the bank or any of its subsidiaries should also be described.

24. § 206.51, Form F-5 (Proxy Statement), Item 8, Relationship with Independent Public Accountants, is amended as follows:

*Item 8—Relationship With Independent Public Accountants.*

(e) If action is to be taken with respect to the selection or approval of auditors, or if it is proposed that particular auditors shall be recommended by any committee to select auditors for whom votes are to be cast, name the auditors and describe briefly any direct financial interest or any material indirect financial interest in the bank or any of its parents or subsidiaries, or any connection during the past 3 years with the bank or any of its parents or subsidiaries in the capacity of promoter, underwriter, voting trustee, director, officer, or employee. If the auditors to be selected are other than those which were engaged as the principal auditors for the bank's most recently filed certified financial statements, briefly summarize the circumstances and conditions surrounding the proposed change of such auditors, and state whether such change was recommended or approved by:

(1) Any audit or similar committee of the Board of Directors, if the bank has such a committee; or

(2) The Board of Directors, if the bank has no such committee.

(f) For the fiscal year most recently completed, describe each professional service provided by the auditor and state the percentage relationship which the aggregate of the fees for all nonaudit services bear to the audit fees, and, except as provided below, state the percentage relationship which the fee for each nonaudit service bears to the audit fees. Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by (1) any audit or similar committee of the board of directors and (2) for any service not approved by an audit or similar committee, the board of directors.

*Instructions.* 1. For purposes of this subsection, all fees for services provided in connection with the audit function (e.g., reviews of quarterly reports, filings with the Board, and annual reports) may be computed as part of the audit fees. Indicate which services are reflected in the audit fees computation.

2. If the fee for any nonaudit service is less than 3 per cent of the audit fees, the percentage relationship need not be disclosed.

3. Each service should be specifically described. Broad general categories such as "tax matters" or "management advisory services" are not sufficiently specific.

4. Describe the circumstances and give details of any services provided by the bank's independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary.

5. Describe any existing direct or indirect understanding or agreement that places a limit on current or future years' audit fees, including fee arrangements that provide fixed limits on fees that are not subject to reconsideration if unexpected issues involving accounting or auditing are encountered. Disclosure of fee estimates is not required.

\* \* \* \* \*

Board of Governors of the Federal Reserve System.

Theodore E. Allison,  
Secretary of the Board.

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BILLING CODE 6210-01-M

12 CFR Part 215

[Docket No. R-210]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

AGENCIES: Board of Governors of the Federal Reserve System

ACTION: Final Rule.

**SUMMARY:** This final regulation is issued to implement the reporting requirements of Titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA") (Pub. L. 95-630), 12 U.S.C. 1817(k)(1) and 1972(2)(G). Title VIII requires executive officers and principal shareholders of federally

insured banks to file an annual report with the boards of directors of their banks concerning the officers' or shareholders' indebtedness to correspondent banks (*i.e.*, a bank that maintains a correspondent account for the insured bank). Title IX requires each federally insured bank to file annually a publicly available report with the appropriate Federal banking agency listing the bank's principal shareholders, all of the bank's officers or principal shareholders who are indebted, or whose related interests are indebted, to the bank or its correspondent banks during the year, and the aggregate amount of indebtedness of these persons and their related interests to the bank and to the bank's correspondent banks.

**EFFECTIVE DATE:** December 31, 1979.

**FOR FURTHER INFORMATION CONTACT:** James V. Mattingly, Jr., Assistant General Counsel, (202/452-3430), Bronwen Mason, Senior Attorney, (202/452-3564), Board of Governors of the Federal Reserve System, Washington, D.C. 20551; Larry Raz or Sharon Miyasato, Attorneys, (202/447-1880), Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East SW., Washington, D.C. 20219.

**SUPPLEMENTARY INFORMATION:** On March 9, 1979, the Federal banking agencies published for comment proposed regulations to implement Titles VIII and IX of FIRA. The agencies received 108 letters of comment. Upon review of the comments received and after a reevaluation of the regulations published for comment, the agencies have made certain changes in the proposed regulations. Those changes (as reflected in the final regulations), an explanation of the provisions of the final regulations, and a discussion of the comments received are set forth below.

#### A. Requirements of Titles VIII and IX

1. *Prohibited Transactions.* Effective March 10, 1979, Title VIII of FIRA, which amended section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), prohibits banks that maintain a correspondent account relationship with each other from extending credit to each other's executive officers, directors, or principal shareholders unless the extension of credit is (1) made on substantially the same terms as those prevailing at the time for comparable transactions with other persons and (2) does not involve more than the normal risk of repayment or present other unfavorable features. Title VIII also prohibits the opening of a correspondent account relationship between banks where there is a preferential extension of credit from one

of the banks to an executive officer, director, or principal shareholder of the other bank.

A principal shareholder of a bank is a person that directly or indirectly owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of the bank. Shares of a bank or bank holding company owned or controlled by a member of an individual's immediate family are considered to be controlled by the individual for the purposes of determining principal shareholder status. Title VIII defines an executive officer as the term is defined in section 22(g) of the Federal Reserve Act. The Board has defined the term as used in that statute as a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the bank. The agencies have applied this definition, which is found in § 215.2(d) of Subpart A of the Board's Regulation O, to Titles VIII and IX.<sup>2</sup>

While the proposed regulations included a subsection that restated the prohibitions of Title VIII, this restatement elicited little comment and has been eliminated from the final regulation. The final regulation, including the definitions contained therein, relate to the reporting requirements imposed by Titles VIII and IX of FIRA on member banks and their executive officers and principal shareholders. However, the final rule contains a definition of "correspondent account," which the agencies believe should be used by banks in complying with the prohibitions of Title VIII. In complying with these prohibitions, banks should also use the definition of executive officer in section 215.2(d) of the Board's Regulation O and the definition of control in section 215.2(b) of Regulation O.

2. *Title VIII Reports by Executive Officers and Principal Shareholders.* In addition to its prohibitions, Title VIII contains two reporting requirements. The first report is required from executive officers and principal "stockholders of record" of federally

<sup>2</sup> Unlike the definition in Subpart A, an executive officer of a member bank, for the purposes of Titles VIII and IX and this Subpart, does not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless that person is also an executive officer of the member bank. Similarly, a director of a member bank does not include a director of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless that person is also a director of the member bank.

insured banks.<sup>3</sup> Title VIII does not require this report to be made available to the public. As discussed in the next section, the second report is required from the insured bank itself and, under the statute, must be made available to the public. The Title VIII reports are not required from, and do not cover indebtedness of, bank directors unless the director is also a principal stockholder or an executive officer. As discussed below, the agencies have defined principal "stockholder of record" to mean a principal shareholder (*i.e.*, a person that, directly or indirectly, owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of the bank).

Under Title VIII, each executive officer or principal shareholder of an insured State bank is required to report to the board of directors of that bank annually the following items:<sup>3</sup>

a. The "maximum amount of indebtedness" of the executive officer or principal shareholder and of each of that person's related interests (*i.e.*, controlled companies or political or campaign committees) to each bank that maintains a correspondent account ("correspondent bank") for the reporting person's bank;

b. The amount of indebtedness outstanding as of a date 10 days before the report is filed of the executive officer or principal shareholder and of each of that person's related interests to each correspondent bank; and

c. The terms and conditions (including the range of interest rates) for each extension of credit included in the figure reported as the "maximum amount of indebtedness."<sup>4</sup>

In answer to numerous comments reflecting concern over personal privacy, the agencies wish to stress that the bank is not required by Title VIII or IX or by these regulations to make these reports available to the public. The reports submitted by executive officers

<sup>2</sup> While the prohibitions of Title VIII apply to all banks, the reporting requirements of Title VIII are limited to federally insured banks. As used in Titles VIII and IX, insured bank means a national bank, a State member bank, and a federally insured nonmember State bank.

<sup>3</sup> Under Title VIII, the executive officer or principal shareholder must file a report if the person is indebted during the year of a correspondent bank. If the officer or shareholder is not indebted to a correspondent bank, the officer or shareholder is not required to file a report. However, where the officer or shareholder is not indebted to a correspondent bank but a related interest(s) (controlled company or political or campaign committee) of the officer or shareholder is so indebted, the regulation requires the officer or shareholder to file a report concerning the indebtedness of the person's related interest(s).

<sup>4</sup> The regulation does not require a report on the terms and conditions of indebtedness outstanding 10 days before the report is filed.

and principal shareholders to the board of directors of the insured bank must be maintained at the bank for three years and should not be forwarded to the appropriate Federal banking agency unless the agency so requests. The appropriate agency may require the reports to be retained by the bank for an additional period of time. The reports are, of course, subject to inspection by examiners of the appropriate Federal banking agency.

**3. Title VIII Report By Insured Banks.** Title VIII requires each insured bank to compile the reports submitted to it by its executive officers and principal shareholders and to furnish such compilation annually to the appropriate banking agency. The regulation specifies that this compilation requirement shall be satisfied through the submission of the information in the public report required to be filed by insured banks under Title VIII.

Title VIII requires each insured bank to file with the appropriate banking agency an annual report listing:

1. The name of each executive officer or principal shareholder who files a report of indebtedness with the bank's board of directors; and

2. The "aggregate amount of all extensions of credit" made to these persons and their related interests by each correspondent bank of the insured bank.

The agencies have defined "aggregate amount of all extensions of credit" as a single figure that represents the sum of the "maximum amounts of indebtedness" reported to the insured bank's board of directors by the bank's executive officers and principal shareholders. This report will be made a part of the report filed by the insured bank under Title IX. The Title IX report must be made available to the public by the appropriate Federal banking agency and by the bank itself.

**4. Title IX Report By Insured Banks.** Title IX requires each insured bank to file with the appropriate Federal banking agency an annual report listing:

1. The name of each of its principal shareholders as of December 31 of the reporting year;

2. The name of each executive officer or principal shareholder during the year who was indebted, or whose related interest was indebted, to the bank during the year;<sup>5</sup> and

<sup>5</sup>In the regulation issued for comment, the agencies proposed that this list include each executive officer or principal shareholder of the member bank, whether or not the person was indebted to the member bank. The agencies have modified this section to require a list of only those executive officers or principal shareholders who were indebted, or whose related interests were

3. The "aggregate amount of all extensions of credit" by the insured bank during the year to these persons and their related interests.

As discussed in section B5 below, the agencies have defined "the aggregate amount of all extensions of credit" as the sum of the highest amount of credit extended by the member bank during the year to each of its executive officers and principal shareholders and to each of their related interests. The Title IX reports must be made available to the public by the insured bank and by the appropriate banking agency.

#### B. Discussion of Issues

The bulk of the comments the agencies received on the proposed regulation focused on particular situations in which the reporting requirements were not appropriate, would be costly, would impose substantial burden on reporting persons, or would be difficult, if not impossible, to compile. A discussion of the major issues raised by the comments and the steps taken by the agencies to address the issues follows.

**1. Correspondent Account.** While the prohibitions and reporting requirements of Title VIII are based on the existence of a correspondent account relationship, the statute does not define the term correspondent account. The proposed regulation defined the term correspondent account as an account maintained by one bank with another for the deposit or placement of funds. The notice accompanying the proposed regulation asked for comment on this definition as well as on whether time deposits and accounts maintained for Federal funds transactions should be excluded from the definition of correspondent account. Most of the commenters were generally satisfied with the definition, provided that the suggested exclusions for time deposits and Federal funds were adopted.

In the final regulation, the agencies have excluded time deposits and accounts maintained solely for federal funds or Eurodollar transactions at prevailing market rates from the definition of correspondent account. These types of transactions are not generally considered as establishing correspondent accounts. The agencies believe these exclusions are appropriate and consistent with the Congressional intent behind the statute, which appears to have been focused on non-interest bearing or demand accounts. Since the excluded transactions are generally

indebted, as more accurately reflecting the legislative intent of the statute as well as its structure.

made only at prevailing market rates (and the exclusion is so limited in the regulation), the possibility of abuse of these types of accounts for the benefit of persons associated with the bank is remote.

While a number of commenters proposed additional exclusions from the definition of correspondent account (such as accounts maintained for credit card facilities or travellers checks, accounts opened in a fiduciary capacity, accounts maintained to clear checks or for securities transactions, accounts used for correspondent business for small banks, or accounts maintained for brief periods of time), the agencies do not believe that these exclusions are warranted. The legislative history of the statute indicates that the reason for its enactment was the difficulty experienced in determining whether an account (such as one used to clear checks) was being used for legitimate purposes or, in whole or in part, to secure benefits for bank insiders. The preferential lending prohibitions of Title VIII were designed to eliminate the necessity to prove that the account was not maintained for a legitimate purpose by prohibiting all preferential credit extensions by a correspondent bank, whether or not the correspondent account was maintained for a legitimate purpose.

**2. Correspondent Bank.** The regulation published for comment proposed to limit the reporting requirements of Title VIII to those correspondent banks that maintained correspondent accounts for the member bank of \$100,000 or more during the reporting year. In other words, executive officers and principal shareholders of a member bank would report their indebtedness to the member bank's correspondent banks *only* where the correspondent account relationship aggregated \$100,000 or more during the year. A cut-off figure was believed appropriate to eliminate reporting of indebtedness from banks maintaining correspondent accounts of an insignificant size, where there was believed to be little if any potential for insider abuse. Banks that hold insignificant accounts for another bank are not generally regarded as having a correspondent account relationship with the bank.

Most of the commenters favored a cut-off figure for the correspondent accounts based on an *average* daily balance during the year, since a correspondent account could exceed \$100,000 for only a few days during the year and thus might not accurately reflect the extent of the correspondent relationship between the banks. While the agencies believe that a

dollar cut-off for correspondent banks is appropriate, the agencies believe that an average daily balance of \$100,000 during the year may be too high in the case of smaller banks. Accordingly, the agencies have decided not to require a member bank's executive officers or principal shareholders to report on their indebtedness to banks that maintain correspondent accounts for the member bank that do not exceed an average daily balance of \$100,000 or 0.5 percent of the member bank's total deposits (as reported in the member bank's first consolidated report of condition during the reporting year), whichever amount is smaller.

3. "Stockholder of Record". The prohibitions of Title VIII apply to any person (company or individual) that owns, controls, or has power to vote more than 10 percent of a bank's voting shares. The reporting requirements of Titles VIII and IX, however, apply to each "stockholder of record" who "directly or indirectly" owns, controls, or has the power to vote more than 10 percent of a bank's voting shares. The term "stockholder of record" is not defined in the Act.

The proposed regulation defined "stockholder of record" in conformity with the prohibitions of Title VIII as any person who directly or indirectly owns, controls, or has the power to vote the bank's shares. This definition would include the actual owner of the shares, whether or not that person's name appears on the bank's stock register as the owner of the shares.<sup>6</sup> The Board received no adverse comment on this aspect of the definition of principal stockholder. This interpretation is consistent with the legislative history of Titles VIII and IX, which shows a clear Congressional intent to cover the actual major shareholders of the bank rather than just those persons whose names appear on the bank's stock register.<sup>7</sup> If Title VIII's reporting requirement were confined solely to stockholders whose names appear on the bank's stock register, the reporting requirements of the statute would not conform to the prohibitions of the statute and would be

<sup>6</sup> The Definition would also include those persons who control the member bank's parent bank holding company. A person (individual or company) that controls a member bank's parent bank holding company would "indirectly" control the member bank. Control of a company is defined, as in Title I of FIRA and Subpart A of Regulation O, as generally 25 percent of the company's outstanding voting shares, control of the election of a majority of the company's board of directors, or the power to exercise a controlling influence over the management or policies of the company.

<sup>7</sup> See H. Rep. No. 95-1383, 95th Cong., 2d Sess. 6, 10 (1978); remarks of Congressman St. Germain, 124 *Congressional Record* H11724 (Oct. 5, 1978).

almost, if not completely, meaningless. Accordingly, the agencies have adopted in the final rule the definition of "stockholder of record" as proposed.

4. *Banks as Principal Shareholders.* Under Titles VIII and IX, a bank that controls another bank could be viewed as a principal shareholder and subject to the reporting requirements of Titles VIII and IX. This situation would arise mainly in the case of foreign banks since U.S. banks are generally prohibited from holding shares of another bank. The final regulation excludes banks (including insured banks and foreign banks) from the definition of principal shareholder for the purposes of the reporting requirements of Titles VIII and IX. Of course, individuals and non-bank companies controlling banks that control other banks are principal shareholders covered by the reporting requirements of Titles VIII and IX.

The agencies do not believe that normal and routine interbank transactions were the type of transactions for which the reporting requirements were designed or which they can adequately accommodate. Several commenters indicated that, because of the volume of routine interbank transactions, the bank principal shareholders would find the report extremely burdensome and costly, if not impossible, to compile. Inclusion of interbank transactions would also inflate the aggregate figure reported by the bank and would be misleading. The exclusion of bank principal shareholders from the reporting requirements of Titles VIII and IX is consistent with the lending restrictions of section 22(h) of the Federal Reserve Act (Title I of FIRA, 12 U.S.C. 375b), which excludes insured banks as principal shareholders, the exemption from the affiliate lending restrictions of section 23A of the Federal Reserve Act (12 U.S.C. 371c) for loans by a member bank to an insured bank, where the member bank owns 50 percent of the insured bank's voting shares, and the intent by Congress not to disrupt transactions between a bank and its correspondents.<sup>8</sup>

5. *Amount of Indebtedness to be Reported.* Under Title VIII, the executive officers and principal stockholders of an insured bank must report to the board of directors of their bank the "maximum amount of indebtedness" of the officer or stockholder and each of that person's

<sup>8</sup> Since foreign banks and their U.S. bank subsidiaries deal with many of the same correspondent banks, the inclusion of the foreign bank as a principal shareholder would restrict (and in some cases prohibit) normal transactions between the foreign bank and its own correspondent banks. Such a result does not appear to have been intended by Congress.

related interests to each of the insured bank's correspondent banks. The proposed regulation defined "maximum amount" as the highest indebtedness outstanding during the year. The final regulation retains this definition of maximum amount, but allows the reporting person the option of reporting instead the highest end of the month indebtedness outstanding during the year. A number of commenters favored the highest end of the month balance because smaller banks do not maintain records that indicate daily borrower indebtedness. This option would allow the reporting person to check only the monthly loan statements from lending banks, thereby reducing the time and burden of the reporting requirement to the reporting person as well as the correspondent banks.

In the notice to the regulation proposed for comment, the Board asked for comment on whether "maximum amount" should be defined as the simple sum of all extensions made during the year and whether this alternative definition would be less burdensome for the reporting person. The commenters universally recommended against this approach on the basis that the sum approach would yield a highly inflated and misrepresentative figure. The commenters also did not believe that the sum approach would reduce the reporting burden to any significant extent. Accordingly, the agencies have determined not to adopt the sum approach.

As indicated above, under Title VIII the insured bank reports to the appropriate Federal banking agency, "the aggregate amount of all extensions of credit" to its executive officers and principal shareholders and their related interests from correspondent banks. The agencies have defined the "aggregate amount" as the sum of the maximum amounts of indebtedness reported to the bank's board of directors by its executive officers and principal shareholders. In other words, the banks are only required to total the figures reported to them by their officers and shareholders and submit this total (a single figure) to the appropriate agency.

Under Title IX, the insured bank reports to the appropriate agency the "aggregate amount of all extensions of credit" the insured bank makes to its executive officers and principal shareholders and their related interests. Consistent with the definition in Title VIII, the agencies have defined "aggregate amount" in Title IX as the sum of the highest amounts of credit outstanding during the year (or as an alternative the highest end of the month

credit outstanding during the year) from the member bank to each of its executive officers and principal shareholders and to each of the related interests of such persons. The sum of the highest amounts (rather than the sum of all) credit extended would be reported. This approach would, as in the Title VIII report, more accurately reflect the extent to which the bank is extending credit to its insiders. The commenters favored this definition of "aggregate amount" because it would be more representative of extent of lending by a bank to its officers and shareholders.

6. *Banks as Related Interests.* Under Title IX, each member bank must report the aggregate amount of credit extended to its principal shareholders (which by definition would include the bank's parent bank holding company) and the related interests of the principal shareholders, which would include all the other subsidiaries (including banks) of the parent bank holding company. In the case of multi-bank holding companies, the volume of indebtedness between bank subsidiaries could be substantial. The commenters indicated that the practical difficulties and the burden and cost of calculating and keeping track of these inter-bank transactions would be immense. Several of the commenters indicated they did not believe it possible to comply because of the number of their subsidiaries and the extent of their operations. Moreover, this inter-bank indebtedness would tremendously inflate the aggregate amount of debt reported and render the figure all but meaningless.

This same problem exists in Title VIII but is greatly magnified. Under Title VIII, a principal shareholder of an insured bank must report on indebtedness to the shareholder and to each of the shareholder's related interests from each of the insured bank's correspondent banks. Since a bank holding company qualifies as a principal shareholder, a bank holding company must report not only on its indebtedness to each of the correspondent banks of each of its subsidiary banks, but also on the indebtedness of each of the holding company's related interests (including each of its subsidiary banks) to each of the correspondent banks of each of the holding company's subsidiary banks. In the case of a multi-bank holding company system, the number and complexity of the reports and the corresponding recordkeeping burden is immense.<sup>9</sup> To comply with the reporting

requirements, the holding company must maintain records on the transactions between each of its subsidiary banks and all the correspondents of all of its other subsidiary banks. Considering the volume of interbank transactions between correspondents and the number of correspondent banks involved, the recordkeeping burden would be substantial, would exceed any benefit derived from the report, and would tend to disrupt normal banking relationships.

In light of the undue burden that would result in these cases and in accordance with the intent of Congress in Titles VIII and IX not to disrupt routine transactions between banks, the agencies have determined to exclude banks (including foreign banks) from the definition of "related interest" in the final regulation. The exclusion of insured banks is entirely consistent with the statutory definition of "company" in section 22(h) of the Federal Reserve Act (Title I of FIRA). In that Title, Congress expressly excluded insured banks from the definition of company so as not to interfere with, and in recognition of the tremendous volume of, inter-bank transactions. Since the Title IX report was intended by Congress as a report for Title I indebtedness (that is indebtedness of a bank's own insiders to the bank), the agencies believe the exclusion of insured bank from the definition of company is appropriate and consistent with the Congressional intent underlying Title IX. The information on inter-bank transactions among bank holding company subsidiary banks is available to the agencies through reports and examinations of bank holding companies:

The exclusion of banks from the definition of related interest for the Title VIII report is also consistent with the Congressional intent underlying Title VIII. In that Title, Congress intended to prohibit the misuse of a bank's correspondent account for the benefit of insiders through preferential extensions of credit. There was no intent to restrict, or require reports on, routine inter-bank transactions or credit extensions by a correspondent bank to the depositing bank itself.<sup>10</sup> See H. Rep. No. 1383, 95th

statute was clearly not intended to prohibit or require reports on extensions of credit to a bank from its correspondent banks. Inclusion of banks as related interests would have this effect in many cases.

<sup>10</sup>The focus of Congressional attention in this area was on individuals who had used their bank positions for their personal benefit. There is little, if any, evidence that Congress intended to cover bank holding companies as insiders or bank subsidiaries as related interests for the purposes of these reports.

Cong., 2d Sess., 8, 13 (1978). This Congressional intent is also evidenced in the incorporation in Title VIII of the definition of "extension of credit" in section 23A of the Federal Reserve Act, which definition excludes certain routine inter-bank transactions.

7. *Types of Indebtedness Reported.* Under Title VIII, executive officers or principal shareholders must report on their indebtedness and their related interests' indebtedness to correspondent banks. The proposed regulation incorporated the definition of "extension of credit" contained in Subpart A of the Board's Regulation O. Under that definition, a purchase by a correspondent bank of commercial paper, publicly traded bonds or debentures issued by a principal shareholder of a bank (or a related interest of the principal shareholder) for which the correspondent bank maintained a correspondent account would constitute an extension of credit and would be reportable. A number of commenters indicated that the burden imposed on the reporting person to maintain records on purchases of commercial paper of the reporting person or of a related interest would be considerable. Indeed, if the paper is in bearer form, the reporting person may not know which, if any, correspondent banks may have purchased the paper.

The final regulation defines the term "indebtedness" as an extension of credit as defined in Subpart A of the Regulation O, but excludes commercial paper, bonds, and debentures issued in the ordinary course of business. The agencies believe that Congress did not intend to require reports on these types of transactions as there appears little if any potential for the type of correspondent account abuse that the reporting requirements of Title VIII were intended to reveal. Accordingly, the agencies have determined that it would be appropriate and consistent with the Act not to include such items as indebtedness.

The agencies have also excluded from the term indebtedness consumer credit aggregating \$5,000 or less from each correspondent bank, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public. This exclusion merely carries forward the exclusion of \$5,000 in open end credit from the definition of "extension of credit" in Subpart A of Regulation O.

8. *Description of the Terms and Conditions of Indebtedness.* In addition to reporting information on the amount of indebtedness to correspondent banks, the principal shareholder or executive officer is required by Title VIII to report

<sup>9</sup>This is particularly true since in many cases affiliate banks have correspondent account relationships with many of the same banks. The

information on the terms and conditions (including the range of interest rates) of such indebtedness. The final regulation requires the reporting person to submit information on the terms and conditions (including the range of interest rates, the original amount, date, maturity, payment terms, security, if any, and any other unusual term or condition) on each extension of credit that is included in the maximum amount of indebtedness reported. The terms and conditions must be reported for extensions of credit to the reporting person as well as the related interests of the reporting person. The reporting person is *not* required to provide this information for the indebtedness reported 10 days before the report is filed.

9. *Time for Filing Reports.* The proposed regulation required executive officers and principal shareholders to file reports of indebtedness with their bank's board of directors by January 10 of each year. The insured bank was required to report to the appropriate bank agency by January 31. A large number of commenters indicated that the January 10 date is too close to the end of the year when numerous other reports must be filed. A number of banks also suggested a later date for the bank's January 31 reporting date.

In view of these comments, the final regulation provides that executive officers and principal shareholders must report to their bank on or before January 31 of each year, rather than by January 10. The bank must report to the appropriate agency by March 31 of each year, rather than January 31.

Under Title VIII, executive officers and principal shareholders must still report on their indebtedness to correspondent banks outstanding 10 days before the date the report is filed with their bank's board of directors. A number of commenters indicated that the 10 day period did not provide enough time to compile the amount of indebtedness outstanding to correspondent banks 10 days before the date the report is filed. The 10-day time limit is a requirement of the statute. However, in view of the fact that the reporting person may not be able to determine this amount in the short time period provided, the agencies have provided in the final regulation that the officer or shareholder may estimate the amount of indebtedness outstanding 10 days before the report is filed provided the correct amount is filed within the next 30 days.

In the notice accompanying the proposed regulation, the agencies indicated that they would consider limiting the time period for which the reports must be filed in the first year to

the period from July 1 through December 31, 1979. The agencies believe this is necessary in order to provide for the orderly implementation of the statute's reporting requirements. The agencies do not believe that any further extension of the period is necessary since the reporting persons and banks were allowed sufficient time between the publication of the proposed regulation and the beginning of the reporting period to make adequate preparations for the reporting requirements.

10. *Forms.* The agencies are preparing forms for the public reports required to be filed by insured banks under Titles VIII and IX. The first of these reports is not due to be filed until March 31, 1980. A suggested format for the reports to be made by executive officers and principal shareholders to their bank's board of directors is also being prepared. This form is not a mandatory agency form, but will be provided as a guide to assist executive officers and principal shareholders in complying with their reporting requirements under Title VIII. These forms will be made available to member banks in the near future for distribution to their executive officers and principal shareholders.

11. *Responsibility of Insured Banks to Inform Officers and Shareholders of Requirements of Title VIII.* The agencies have also required that each insured bank advise its executive officers and principal shareholders (to the extent known by the bank) of the reports required by Title VIII and to make available to these persons a list of the insured bank's correspondent banks. This requirement is necessary to ensure that all persons required to file the Title VIII reports with their bank's board of directors are aware of the requirements of the statute and are provided with the names of correspondent banks necessary to comply with the statute.

The expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957), were not strictly followed in developing this regulation, since the proposal was initiated before the policy statement was adopted. The regulation imposes no report burdens or record keeping costs that are not required by the statute. In the development of this final regulation, the Board has complied with the spirit and intent of its policy statement by making every effort to reduce unnecessary regulatory burdens with due regard for the purposes of the statute.

## PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

Accordingly, the Board of Governors of the Federal Reserve System hereby amends the Board's Regulation O (12 CFR Part 215) to read as follows:

1. The table of contents is revised.
2. Section 215.1 and §§ 215.10 through 215.23 are revised.
3. The section heading and the first sentence of § 215.2 is revised.
4. The section heading of § 215.9 is revised.

### Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

#### Sec.

- 215.1 Authority, purpose, and scope.
- 215.2 Definitions.
- 215.3 Extension of credit.
- 215.4 General prohibitions.
- 215.5 Additional restrictions on loans to executive officers of member banks.
- 215.6 Extensions of credit outstanding on March 10, 1979.
- 215.7 Records of member banks.
- 215.8 Reports by executive officers.
- 215.9 Report on credit to executive officers.
- 215.10 Annual report on aggregate credit to executive officers and principal shareholders.
- 215.11 Civil penalties.

### Subpart B—Reports on Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks

- 215.20 Authority, purpose, and scope.
- 215.21 Definitions.
- 215.22 Reports by executive officers and principal shareholders.
- 215.23 Report by member bank.

Authority.—Secs. 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7), and 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi)

### Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

#### § 215.1 Authority, purpose, and scope.

(a) *Authority.* This Subpart is issued pursuant to sections 11(i), 22(g) and 22(h) of the Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)) and 12 U.S.C. 1817(k)(3).

(b) *Purpose and scope.* This Subpart governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of (1) the member bank, (2) a bank holding company of which the member bank is a subsidiary, and (3) any other subsidiary of that bank holding company. It also applies to any extension of credit by a member bank to (1) a company controlled by such a person and (2) a political or campaign committee that benefits or is controlled by such a

person. This Subpart also implements the reporting requirements of 12 U.S.C. § 375a concerning extensions of credit by a member bank to its executive officers and of 12 U.S.C. § 1817(k) concerning extensions of credit by a member bank to its executive officers and principal shareholders.

#### § 215.2 Definitions

For the purpose of this Subpart, the following definitions apply unless otherwise specified:

\* \* \* \* \*

#### § 215.9 Report on credit to executive officers

\* \* \* \* \*

#### § 215.10 Annual report on aggregate credit to executive officers and principal shareholders

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) "Aggregate amount of all extensions of credit" means the sum of the highest amount of credit outstanding during the calendar year (or, as an alternative, the highest end of the month credit outstanding during the calendar year) from the member bank to: (i) Each of its executive officers, (ii) each of its principal shareholders, and (iii) each of the related interests of these persons.

(2) "Principal shareholder of a member bank" means any person<sup>8</sup> (other than an insured bank, or a foreign bank as defined in 12 U.S.C. 3101(7)) that, directly or indirectly, owns, controls, or has power to vote more than 10 per cent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(3) "Related interest" means any company controlled by a person and any political or campaign committee, the funds or services of which will benefit a person or that is controlled by a person. For the purposes of this section and

<sup>8</sup>For purposes of this section and Subpart B, executive officers of a member bank do not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless, of course, the executive officer is also an executive officer of the member bank.

<sup>9</sup>The term "stockholder of record" appearing in 12 U.S.C. 1817(k)(1) and 1972(2)(G) is synonymous with the term person.

Subpart B, a related interest does not include a bank or a foreign bank (as defined in 12 U.S.C. 3101(7)).

(b) *Contents of Report.* On or before March 31 of each year, each member bank shall file with the appropriate Federal Reserve Bank in the case of State member banks, or the Comptroller of the Currency in the case of national banks or banks located in the District of Columbia, a report that shall include the following information with respect to the preceding calendar year.

(1) A list by name of each person who was a principal shareholder of the member bank on December 31;

(2) A list by name of each executive officer or principal shareholder of the member bank during the year to whom, or to whose related interests, the member bank had outstanding an extension of credit during the year; and

(3) The aggregate amount of all extensions of credit from the member bank to its executive officers and principal shareholders and their related interests.

(c) *Availability of Report.* The Board or the Comptroller, as the case may be, and the member bank shall make a copy of the report required by this section available to the public upon request.

#### § 215.11 Civil penalties.

As specified in section 29 of the Federal Reserve Act (12 U.S.C. 504), any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this Subpart (other than § 215.10) is subject to a civil penalty of not more than \$1,000 per day for each day during which the violation continues.

#### Subpart B—Reports on Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks

#### § 215.20 Authority, purpose, and scope.

(a) *Authority.* This Subpart is issued pursuant to section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)) and 12 U.S.C. §§ 1817(k)(3) and 1972(2)(F)(vi).

(b) *Purpose and scope.* This Subpart implements the reporting requirements of Title VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA") (P.L. 95-630), 12 U.S.C. § 1972(2)(G). Title VIII prohibits (1) preferential lending by a bank to executive officers, directors, and principal shareholders of another bank when there is a correspondent account relationship between the banks, and (2) the opening of a correspondent account relationship between banks where there is a preferential extension of credit by

one of the banks to an executive officer, director, or principal shareholder of the other bank.

#### § 215.21 Definitions.

For the purposes of this Subpart, the following definitions apply unless otherwise specified:

(a) "Bank" has the meaning given in 12 U.S.C. 1841(c), and includes a branch or agency of a foreign bank, or a commercial lending company controlled by a foreign bank or by a company that controls a foreign bank, where the branch or agency is maintained in a State of the United States or in the District of Columbia or the commercial lending company is organized under State law.

(b) "Company," "control of a company or bank," "executive officer," "extension of credit," "immediate family," and "person" have the meanings provided in Subpart A.

(c) "Correspondent account" is an account that is maintained by a bank with another bank for the deposit or placement of funds. A correspondent account does not include:

(1) Time deposits at prevailing market rates, and

(2) An account maintained in the ordinary course of business solely for the purpose of effecting federal funds transactions at prevailing market rates or making Eurodollar placements at prevailing market rates.

(d) "Correspondent bank" means a bank that maintains one or more correspondent accounts for a member bank during a calendar year that in the aggregate exceed an average daily balance during that year of \$100,000 or 0.5 per cent of such member bank's total deposits (as reported in its first consolidated report of condition during that calendar year), which ever amount is smaller.

(e) "Principal shareholder" and "related interest" have the meanings provided in § 215.10 of Subpart A.

#### § 215.22 Report by executive officers and principal shareholders.

(a) *Annual Report.* If during any calendar year an executive officer or principal shareholder of a member bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank of the member bank, the executive officer or principal shareholder shall, on or before January 31 of the following year, make a written report to the board of directors of the member bank.<sup>10</sup>

<sup>10</sup>See note 7 above.

<sup>11</sup>Persons reporting under this section are not required to include information on extensions of credit.  
Footnotes continued on next page

(b) *Contents of Report.* The report required by this section shall include the following information:

(1) The maximum amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests to each of the member bank's correspondent banks during the calendar year;

(2) The amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests outstanding to each of the member bank's correspondent banks as of ten business days before the report required by this section is filed;<sup>11</sup> and

(3) A description of the terms and conditions (including the range of interest rates, the original amount and date, maturity date, payment terms, security, if any, and any other unusual terms or conditions) of each extension of credit included in the indebtedness reported under paragraph (b)(1) of this section.

(c) *Definitions.* For the purposes of this section:

(1) "Indebtedness" means an extension of credit, but does not include:

(i) Commercial paper, bonds, and debentures issued in the ordinary course of business; and

(ii) Consumer credit (as defined in 12 CFR 226.2(p)) in an aggregate amount of \$5,000 or less from each of the member bank's correspondent banks, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(2) "Maximum amount of indebtedness" means, at the option of the reporting person, either (i) the highest outstanding indebtedness during the calendar year for which the report is made, or (ii) the highest end of the month indebtedness outstanding during the calendar year for which the report is made.

(d) *Retention of reports at member banks.* The reports required by this section shall be retained at the member bank for a period of three years. The Reserve Bank or the Comptroller, as the case may be, may require these reports to be retained by the bank for an additional period of time. The reports filed under this section are not required by this regulation to be made available

Footnotes continued from last page credit that are fully described in a report by a person they control or a person that controls them, provided they identify their relationships with such other person.

<sup>11</sup> If the amount of indebtedness outstanding to a correspondent bank ten days before the filing of the report is not available or cannot be readily ascertained, an estimate of the amount of indebtedness may be filed with the report, provided that the report is supplemented within the next 30 days with the actual amount of indebtedness.

to the public and shall not be filed with the Reserve Bank or the Comptroller unless specifically requested.

(e) *Member bank's responsibility.* Each member bank shall advise each of its executive officers and each of its principal shareholders (to the extent known by the bank) of the reports required by this section and make available to each of these persons a list of the names and addresses of the member bank's correspondent banks.

#### § 215.23 Report by member banks.

(a) On or before March 31 of each year, each member bank shall compile the reports filed under § 215.22 of this Subpart and shall forward the compilation to the Comptroller of the Currency in the case of a national bank or a bank located in the District of Columbia, or the appropriate Federal Reserve Bank in the case of a State member bank. This compilation shall contain only the information required in paragraph (b) of this section.

(b) Each member bank shall include in the report required under § 215.10 of Subpart A to be filed by March 31 of each year, the following information:

(1) a list by name of each executive officer or principal shareholder that files a report with the member bank's board of directors under § 215.22 of this Subpart; and

(2) the aggregate amount (or sum) of the maximum amounts of indebtedness reported to the board of directors of the member bank under § 215.22(b)(1) by the member bank's executive officers and principal shareholders and their related interests.

By Order of the Board of Governors of the Federal Reserve System, November 19, 1979.  
Theodore E. Allison,  
Secretary of the Board.

[FR Doc. 79-36688 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

[Revision 13, Amdt. 33]

#### Size Standard for the Water Supply Industry for Purposes of SBA Financial Assistance

AGENCY: Small Business Administration.  
ACTION: Final rule.

**SUMMARY:** This rule establishes the SBA financial assistance size standard for the water supply industry at \$2.5 million. It is necessary because small firms in the industry are being faced with increased financial obligations to meet Federal water pollution requirements. It

is expected that providing eligibility for financial assistance for firms below the size standard will help to alleviate the financial distress which is presently being felt by some small firms in the industry.

EFFECTIVE DATE: November 28, 1979.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Jr., (202) 653-8373.

**SUPPLEMENTARY INFORMATION:** On March 6, 1979, the Small Business Administration published in the Federal Register (44 FR 12200) a proposed rule to elicit public comment on a size standard for the water supply industry for purposes of SBA financial assistance. All comments to this proposal have been favorable. These include a positive response from the Environmental Protection Administration, the party which originally requested SBA assistance to alleviate hardship in the industry stemming from the Safe Drinking Water Act.

For this reason as well as reasons stated in the previous Federal Register announcement, SBA adopts as a final rule a \$2.5 million size standard. Accordingly, pursuant to authority contained in Section 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634, § 121.3-10 of Part 121, Chapter I of Title 13, Code of Federal Regulations, is hereby amended by adding subparagraph (d)(12) to read as follows:

§ 121.3-10 Definition of small business for SBA loans.

\* \* \* \* \*

(d) Services. \* \* \*

(12) As small if it is primarily engaged in the water supply industry (SIC 4941) and its annual receipts do not exceed \$2.5 million.

Dated: November 21, 1979.

William H. Mauk, Jr.,  
Acting Administrator.

[FR Doc. 79-36687 Filed 11-27-79; 8:45 am]  
BILLING CODE 8025-01-M

### 13 CFR Part 130

[Amdt. 1]

#### Small Business Energy Loans; Availability of Loan Programs

AGENCY: Small Business Administration.  
ACTION: Final rule.

**SUMMARY:** This change is made in Part 130 to enable SBA to make energy loans under other business loan programs whenever funds are unavailable under the 7(1) small business energy loan program.

EFFECTIVE DATE: November 28, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Evelyn Cherry, Chief, Special Projects Division, 1441 L Street NW., Washington, D.C. 20416, (202) 653-6696.

**SUPPLEMENTARY INFORMATION:****Introduction**

On August 21, 1979, a proposed amendment to § 130.8 of Part 130 was published in the Federal Register (44 FR 48975) to provide that an application for an energy loan could be approved under another loan program if for some reason the applicant were found ineligible, or if funds were not available, under section 7(1) of the Small Business Act. No comments on the proposal were received. Accordingly, the proposed rule is adopted without any substantive change. Pursuant to the authority of Section 7(1) of the Small Business Act, 15 U.S.C. 636, and Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, § 130.8 is amended as follows:

**§ 130.8 Other financing.**

No loan shall be made under this program unless the financial assistance is not otherwise available on reasonable terms from non-Federal sources. The initial processing of an energy loan will be under Section 7(1) of the Small Business Act. If a loan is approved, Section 7(1) guaranty (deferred) participation funds will be utilized. If a Section 7(1) guaranty participation is unavailable for any reason, a guaranty participation may be approved under another loan program for which the applicant is qualified. If no guaranty participation loan is available, or if applicant does not qualify for a guaranty participation under another program, the applicant may be considered for an immediate participation under Section 7(1). If a Section 7(1) immediate participation is unavailable, consideration for an immediate participation may be made under another program for which applicant is eligible. A direct Section 7(1) loan, or a direct loan under another section if direct Section 7(1) loan funds are exhausted, will be approved only if no guaranty or immediate participations are available under any program or if applicant does not qualify for an immediate or guaranty participation under other programs. The requirements of § 120.2 (a) (1) and (2) except § 120.1(a)(2)(iv), relating to documentation of efforts to find other financing, shall apply to loans under this program.

(Catalog of Federal Domestic Assistance Programs No. 59.030 Energy Loan Program)

Dated: November 13, 1979.

William H. Mauk, Jr.,  
*Acting Administrator.*

[FR Doc. 79-36646 Filed 11-27-79; 8:45 am]

BILLING CODE 8025-01-M

**FEDERAL TRADE COMMISSION****16 CFR Part 13**

[Docket No. 9109]

**Karr Preventative Medical Products, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Beverly Hills, Calif. firm and its controlling officer, engaged in the advertising and sale of "Acne-Statín," and acne "treatment," to cease disseminating or causing the dissemination of advertisements that represent that Acne-Statín, or any other product of similar chemical composition, cures acne, eliminates or reduces the causes of acne blemishes, and is superior to all other acne preparations and soap for the antibacterial treatment of acne. The firm and its controlling officer are required to have a reasonable basis at the time of dissemination for representations relating to product efficacy, performance, characteristics or properties, or the result of the use of any product; and prohibited from misrepresenting the extent to which a product has been tested or the results of such tests. Additionally, they are required to establish an independent, irrevocable trust account containing \$175,000 to be used to pay half of all requests for restitution by Acne-Statín purchasers.

**DATES:** Complaint issued April 26, 1978.

Final order issued October 29, 1979.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** FTC/P, Albert H. Kramer, Washington, D.C. 20580. (202) 523-3727.

**SUPPLEMENTARY INFORMATION:** On July 5, 1979, there was published in the Federal Register, 44 FR 39191, a proposed consent agreement with analysis in the Matter of Karr Preventative Medical Products, Inc., a corporation, and Atida H. Karr, M.D., individually and as president of Karr Preventative Medical Products, Inc., for

<sup>1</sup> Copies of the Complaint, and Decision and Order filed with the original document.

the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.20 Comparative data or merits; § 13.20-20 Competitors' products; § 13.70 Fictitious or misleading guarantees; § 13.160 Promotional sales plans; § 13.170 Qualities or properties of product or service; § 13.170-16 Cleansing, purifying; § 13.170-70 Preventive or protective; § 13.190 Results; § 13.195 Safety; § 13.195-60 Product; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests; § 13.250 Success, use or standing; § 13.265 Tests and investigations; § 13.280 Unique nature or advantages. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-55 Refunds, rebates and/or credits. Subpart—Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1585 Competitive inferiority; § 13.1647 Guarantees; § 13.1710 Qualities or properties; § 13.1725 Refunds; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use, or standing; § 13.1762 Tests, purported; § 13.1770 Unique nature or advantages.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitations of product; § 13.1885 Qualities or properties; § 13.1890 Safety; § 13.1895 Scientific or other relevant facts. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1980 Guarantee, in general; § 13.2010 Money back guarantee; § 13.2063 Scientific or other relevant facts. Subpart—Using Deceptive Techniques In Advertising: § 13.2275 Using deceptive techniques in advertising; § 13.2275-70 Television depictions.

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

Carol M. Thomas,  
Secretary.

[FR Doc. 79-36584 Filed 11-27-79; 8:45 am]  
BILLING CODE 6750-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 282

[Docket No. RM79-14]

#### Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978; Notice Setting Deadline To File Comments

November 21, 1979.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice setting deadline to file comments.

**SUMMARY:** In a Notice issued October 19, 1979 (44 FR 61174, October 24, 1979), the Federal Energy Regulatory Commission (Commission) announced that a technical conference with respect to the estimates and submetering requirements contained in the Commission's incremental pricing regulations would be held in Chicago, Illinois, on November 15, 1979. The October 19th Notice also requested written comments on the questions set forth in that Notice. In addition, at the technical conference held on November 15th and 16th in Chicago, Illinois, Commission Staff requested further written comments with respect to any of the questions discussed at the conference. By this Notice, we announce that the deadline for filing comments on the estimating procedures and submetering requirements in Docket No. RM79-14 is November 26, 1979.

**DATE:** Comments due November 26, 1979.

**ADDRESS:** Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:**

Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 8113, Washington, D.C. 20426, (202) 357-8079.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-36602 Filed 11-26-79; 3:45 am]  
BILLING CODE 6450-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Part 200

[Docket No. R-79-499]

#### Minimum Property Standards for Carpet Cushion UM-72

**AGENCY:** Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development.

**ACTION:** Final rule.

**SUMMARY:** This Use of Materials Bulletin (UM) revises and supersedes previously issued Notices and Materials Releases dealing with detached carpet cushion. This Bulletin amends HUD's Minimum Property Standards.

**EFFECTIVE DATE:** December 28, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Leslie H. Breden, Materials Acceptance Division, Room 6176, Office of Architecture and Engineering Standards, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-5929 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On January 31, 1978 (43 FR 4065) the Department published a proposed standard for detached carpet cushion and solicited public comment. Six comments were received in response to the publication. The majority were from manufacturers and associations who desired modifications in weight density and a change in the certification procedure. We have recognized that these changes are desirable and have incorporated them into the attached document.

The minimum weight of urethane foam cushion was proposed at 1.9 lbs/ft<sup>3</sup>. Based upon comments from the cushion industry and our local Field Offices, it was deemed advisable to raise this to 2.2 lbs/ft<sup>3</sup> to insure a better quality product. Also the procedures for certification have been changed to require compliance with American National Standard Institute (ANSI) Z-34. 2, 1969 "Practice for Certification by Producer or Supplier."

A Finding of Inapplicability with respect to environmental impact has been prepared in accordance with HUD Procedures for Protection and Enhancement of Environmental Quality. This regulation has been evaluated and has been found not to have major economic consequences for the general

economy or for individual industries, geographic regions, or levels of government. Copies of the Findings are available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, the Minimum Property Standards incorporated by reference in 24 CFR Part 200, Subpart S are amended as provided in the following Use of Materials Bulletin No. 72.

(Section 7(d) Department of Housing and Urban Development Act (42 USC 3535(d)))

Issued at Washington, D.C., on November 19, 1979.

Morton Baruch,

Deputy Assistant Secretary for Housing—  
Federal Housing Commissioner.

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 ASSISTANT SECRETARY FOR HOUSING -  
 FEDERAL HOUSING COMMISSIONER

TO: REGIONAL ADMINISTRATORS, DIRECTORS,  
 OFFICES OF REGIONAL HOUSING, FIELD  
 OFFICE MANAGERS AND SUPERVISORS

Use of Materials  
 Bulletin No. 72

Date

SUBJECT: HUD STANDARD FOR CARPET CUSHION

Members of the HUD Staff processing cases and inspecting construction shall use this information in determining acceptability of the subject material for the uses indicated.

This Bulletin should be filed with Bulletins on Special Methods of Construction and Materials as required by prescribed procedures. Additional copies may be requisitioned by the field offices.

*The technical description, requirements and limitations expressed herein do not constitute an endorsement, approval or acceptance by the Department of Housing and Urban Development (HUD/FHA) of the subject matter, and any statement or representation, however made, indicating approval or endorsement by the Department of Housing and Urban Development is unauthorized and false, and will be considered a violation of the United States Criminal Code 18, U. S. C. 709.*

*Any reproduction of this Bulletin must be in its entirety and any use in sales promotion or advertising is not authorized.*

Subject to good workmanship, compliance with applicable codes, and the methods of application listed herein, the materials described in this bulletin may be considered suitable for HUD Housing Programs, including Housing for the Elderly and Care-Type Housing.

The eligibility of a property under these Programs is determined on the property as an entity and involves the consideration of underwriting and other factors not indicated herein. Thus, compliance with this bulletin should not be construed as qualifying the property as a whole, or any part thereof, as to its eligibility.

The methods of application for the materials listed herein are to be considered as part of the HUD Minimum Property Standards and shall remain effective until this Bulletin is cancelled or superseded.

## HUD Standard for Carpet Cushion

### Table of Contents

1. Introduction
2. Purpose
3. Scope and Classification
4. Requirements
  - General
  - Dimensions
  - Materials
5. Workmanship
6. Identification
7. Certification

### 1. Introduction

This Use of Materials Bulletin (UM) revises and supersedes previously issued Notices and Materials Releases dealing with carpet cushion, including the cushion requirements included in UM 44b; UM 47a; Notices on prime urethane carpet cushion dated February 14, 1972 and May 12, 1972; MR 681, MR 768, and MR 869, and related amendments. Carpets with attached cushions are not part of this Bulletin but are covered in UM 44c.

### 2. Purpose

The carpet cushion covered by this UM is intended to be used indoors under carpet complying with UM 44c. The cushion may be used directly over above grade concrete, wood, tile, terrazzo, or other acceptable finish flooring materials providing that the subflooring also meets the HUD Minimum Property Standards (MPS). When carpet cushion is to be installed in applications below grade or on concrete slabs, a vapor barrier shall be installed in accordance with Paragraph 507-2 of the MPS, beneath the slabs. Cushion shall be installed with no gaps and with tight seams.

### 3. Scope and Classification

This UM Bulletin covers detached cushion for all HUD programs. Only carpet cushion determined to be in compliance with this Bulletin and certified, shall be acceptable to HUD.

#### Classification

Three types of detached cushions are covered in this document.

#### Type I. Felt

- a. Animal hair uncoated
- b. Rubberized animal hair
- c. Rubberized hair/jute

#### Type II. Cellular Rubber

- a. Rippled
- b. Flat sponge
- c. Latex foam

#### Type III. Urethane Foam

- a. Prime
- b. Densified
- c. Grafted and modified foam
- d. Bonded

Carpet cushion shall also be categorized by class based on use.

**Class 1**—For moderate traffic use within one or two family, multifamily and care-type dwelling units. Moderate traffic areas have been defined as living rooms, dining rooms, bedrooms, recreational rooms, and corridors in single family units. Class 2 cushion may be used in Class 1 applications.

**Class 2**—For heavy traffic use at all levels but specifically for public areas such as lobbies and corridors of multifamily and care-type facilities.

### 4. Requirements

#### General.

Each type of cushion shall meet all of the requirements for Classes 1 or 2 as specified in Table 1. All standards referenced in this document shall be used provided they are applicable and consistent with the issue designated. In the event of conflict between any federal specification referenced herein and this Bulletin, the requirements of this Bulletin shall apply.

#### Dimensions and Weight

The minimum tolerances for thickness and weight shall be as shown in Table 1. Before any thickness measurements are made, the cushion shall be unrolled and left in a relaxed state for 24 hours.

#### Materials

##### Type I—Felt

All Type I cushion shall be made in conformance with Federal Specification DDD-C-00123 dated March 10, 1972 and appropriate amendments.

##### Type II—Cellular Rubber

All Type II cushion shall be made in conformance with Federal Specification ZZ-C-00811b dated January 2, 1983 and appropriate amendments. A suitable facing material may be applied to one side of the cushion.

##### Type III—Urethane Foam

###### a. Prime

Prime urethane foam carpet cushion shall conform to Interim Federal Specification L-C-001676, December 10, 1970 "Cushion, Carpet and Rug, Virgin Urethane", Amendment 1, September 7, 1971, and modifications.

Prime urethane foam carpet cushion shall be manufactured from polyester/polyurethane foam. The foam may contain fillers to increase density or enable it to meet the fire resistance requirements specified in this Bulletin, but these fillers shall not be used to calculate the urethane polymer density minimums specified in Table 1. Coloring matter may be added provided it will not bleed or cause any other unsatisfactory performance of the end

product. A suitable facing material shall be applied to one surface of the cushion.

###### b. Densified

Densified prime urethane carpet cushions shall be composed of prime, homogeneous, polyester/polyurethane foam having a modified cellular structure and characterized by elongated cells. A suitable facing material shall be applied to one surface of the cushion.

###### c. Grafted or Modified Foam

Grafted or modified urethane foam cushion shall be composed of prime, homogenous polyester/polyurethane foam characterized by increased stiffness and firmness. A suitable facing material shall be applied to one surface of the cushion.

###### d. Bonded

Bonded urethane foam carpet cushion shall conform to Federal Specification L-C-001369, December 10, 1969, "Cushion, Carpet and Rug, Bonded Urethane" and amendments specified in this Bulletin.

Bonded urethane foam carpet cushion shall be composed of 100% prime polyurethane foam, at least 50% of which shall be polyester foam. Filled, reticulated, impregnated vinyl, slow recovery, fabric and fabric backed foams, separately added fillers, adulterants and foreign material shall not be permitted. Typical adulterants include dirt, tramp metal, wood chips, and paper shall not be permitted. In the event of dispute a representative 50 gram sample shall be scissor cut into one inch cubes or equivalent. The sample shall be placed on a standard U.S. Sieve No. 6 and shaken to remove all debris. The debris shall be weighed to 0.1 gram accuracy and its percent of original weight calculated. A maximum of 1% debris is permitted.

The foam shall be ground or shredded to a particle size not exceeding 1/2", bonded together with a basically urethane-type binder, with sufficient solid content added to allow cushioning to meet the physical and chemical requirements of this Bulletin. A good commercial quality product usually has a binder content having a minimum of 8% by weight of pre-cured mass although this is not mandatory. Materials which reduce the viscosity and improve the wetting characteristics of the urethane prepolymer may be added.

Coloring matter may be added, provided it will not bleed or cause any other unsatisfactory performance of the product. A suitable facing material shall be applied to one surface of the cushion.

5. Workmanship

The cushion shall not have an objectionable odor, be tacky or interact in any deleterious way with the carpet. The facing on the cushion shall be such that conventional carpet may slide across the surface of the cushion during installation. There shall be no cuts, holes or tears more than 1/2" in any direction. Also there shall be no thin or weak spots or imbedded or protruding foreign matter. The seams shall be intact, and the edges straight, paralld and square.

6. Identification

At least every 10 lineal feet, one

cushion surface shall contain a reference to this Bulletin and the name of the manufacturer of a designated and registered identification number, and the product classification by type, class and thickness. Type I cushions may be registered on the basis of a unique or distinctive waffle pattern.

7. Certification

As a condition of acceptance, the manufacturer shall certify that the cushion complies with this UM Bulletin and shall provide satisfactory service. The manufacturer also shall have a record of periodic testing and have a documented quality control program in

accordance with American National Standards Institute (ANSI) Z 34.2—1969, Practice for Certification by Producer or Supplier <sup>1</sup> to assure continued compliance with this UM Bulletin. When requested, these records shall be available to HUD for monitoring purposes.

The producer shall replace or repair the cushion if a justified complaint regarding poor performance or failure is reported to HUD within one year of the date of purchase.

<sup>1</sup> Copies of ANSI Z 34.2, 1969 are available from ANSI, 1430 Broadway, New York, New York, 10018.

Table 1.—Performance

Type	Class	Characteristics	Class 1	Class 2	Test method
I. Felt	a. Uncoated animal hair	Weight, oz/sq yd, min	40.0-5%	50.0-5%	FTMS 191, Method 5040 or 5041.
		Thickness, inches, min	0.25	0.375	FTMS 191, Method 5030.
		Compression set % max 25% deflection	15	15	FTMS 601, Method 12131.
		Tensile strength psi, min	30	30	FTMS 191, Method 5100.
		Flammability*	Pass	Pass	DOC FF 1-70 DOC FF 2-70.
			75 or less	75 or less	ASTM E 84.
	b. Rubberized animal hair/jute	Weight, oz/sq yd, min	40.0-5%	50.0-5%	FTMS 191, Method 5040 or 5041.
		Thickness, inches, min	0.27	0.375	FTMS 191, Method 5030.
		Compression set max 25% deflection	15	15	FTMS 601, Method 12131.
		Tensile strength psi, min	30	30	FTMS 191, Method 5100.
		Flammability*	Pass	Pass	DOC FF 1-70 DOC FF 2-70.
			75 or less	75 or less	ASTM E 84.
II. Cellular rubber	a. Rippled	Weight, oz/sq yd, min	48.0-5%	64.0-5%	FTMS 191, Method 5040 or 5041.
		Thickness, inches, min	0.30	0.40	FTMS 601, Method 12031, ASTM D 105.
		CLD psi 25% deflection min	0.615	0.875	FTMS 601, Method 12151.
		Compression set % max at 50%	15	15	FTMS 601, Method 12131.
		Tensile strength psi, min	8	8	FTMS 191, Method 5100.
		Flammability*	Pass	Pass	DOC FF 1-70 DOC FF 2-70.
	b. Flat sponge	Weight, oz/sq yd, min	56.0-5%	64.0-5%	FTMS 191, Method 5040 or 5041.
		Thickness, inches, min	0.250	0.250	FTMS 601, Method 12031.
		CLD psi, 25% deflection max	0.75	1.5	FTMS 601, Method 12131.
		Compression set % max at 50%	10.0	10.0	FTMS 601, Method 12131.
		Tensile strength psi, min	8.0	8.0	FTMS 191, Method 5100.
		Flammability*	Pass	Pass	DOC FF 1-70 DOC FF 2-70.
	c. Latex foam	Weight, oz/sq yd, min	38.0-5%	48.0-5%	FTMS 191, Method 5040 or 5041.
		Thickness, inches, min	0.25	0.25	FTMS 601, Method 12031.
		CLD psi 25% deflection min	1.0	2.0	ASTM D 1564.
		Compression set % max at 50%	15.0	15.0	FTMS 601, Method 12131.
		Tensile strength psi, min	8.0	8.0	FTMS 191, Method 5100.
		Flammability*	Pass	Pass	DOC FF 1-70 DOC FF 2-70.
III. Urethane foams	a. Prime	Density lb/ft, min**	2.2-5%	2.7-5%	ASTM E 84.
		Thickness, inches, min	0.375	0.375	ASTM D 1564.
		CLD psi 65% deflection min	0.7	1.0	ASTM D 1564.
		Compression set, 50% max	15.0	15.0	ASTM D 1564.
		Tensile strength psi, min	10.0	10.0	ASTM D 1564.
		Elongation, min %	100	100	ASTM D 3594.
	b. Densified	Density lb/ft, min**	2.2-5%	3.0-5%	ASTM D 297.
		Thickness, inches, min	0.313	0.25	ASTM D 1564.
		CLD psi 65% deflection min	0.65	1.30	ASTM D 1564.
		Compression set %, 50% deflection	10.0	10.0	ASTM D 1564.
		Tensile strength psi, min	17	20	ASTM D 1564.
		Elongation, % min	100	100	ASTM D 1564.
	c. Grafted and modified	Density lb/ft, min**	2.2-5%	2.7-5%	ASTM E 84.
		Thickness, inches, min	0.375	0.25	ASTM D 297.
		CLD psi 65%	1.10	1.40	ASTM D 3574.
		Compression set % max at 50% deflection	15.0	15.0	ASTM D 3574.
		Tensile strength psi, min	12.0	17.0	ASTM D 3574.
		Elongation, min %	100	100	ASTM D 3574.
	d. Bonded	Density lb/ft, min**	5.0-5%	6.5-5%	ASTM E 84.
		Thickness, inches, min	0.375	0.375	L-C-001369.
			75 or less	75 or less	ASTM E 84.
			Pass	Pass	DOC FF 1-70 DOC FF 2-70.
			75 or less	75 or less	ASTM E 84.
			Pass	Pass	DOC FF 1-70 DOC FF 2-70.

Table 1.—Performance—Continued

Type	Class	Characteristics	Class 1	Class 2	Test method
III. Urethane foam.....	d. Bonded.....	CLD psi 65% deflection min .....	4.0 .....	5.0 .....	L-C-001369.
		Compression set % max at 50% .....	15.0 .....	15.0 .....	L-C-001369.
		Tensile strength psi, min .....	5.0 .....	7.0 .....	L-C-001369.
		Elongation % min .....	45.0 .....	45.0 .....	L-C-001369.
		Particle size, inches max .....	0.50 .....	0.50 .....	L-C-001369.
		Debris .....	1% .....		See Section 5.2.
		Flammability .....	Pass .....	Pass .....	DOC FF 1-70 DOC FF 2-70.
			75 or less .....	75 or less .....	ASTM E 84.

\*Either test may be used for compliance; in DOC FF 1-70 the laundering requirement does not apply.

\*\*Apparent density will be corrected to urethane polymer density by performing the following test: Ash content, percent as determined in ASTM D 297, subtracted from 100 percent, and multiplied by apparent density, shall equal the minimum values listed in the above table.

[FR Doc. 79-36023 Filed 11-27-79; 8:45 am]

BILLING CODE 4210-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[FRL 1363-8]

#### Energy Related Authority; Delayed Compliance Order for New England Power Company's Brayton Point Station

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** With this notice the Environmental Protection Agency (EPA) announces the issuance of an administrative order to New England Power Company's Brayton Point Generating Station requiring its Boilers Number 1 and 2 at Somerset, Massachusetts, to achieve compliance with air pollution requirements under the Massachusetts State Implementation Plan by July 31, 1982 and January 31, 1982 respectively.

**EFFECTIVE DATE:** November 28, 1979.

**FOR FURTHER INFORMATION CONTACT:** Brian Hennessey, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

**SUPPLEMENTARY INFORMATION:** New England Power Company (NEPCO) operates an electrical power generating station at Brayton Point, Somerset, Massachusetts. The order appearing below addresses emissions from its generating units 1 and 2, which are subject to Regulations for the Control of Air Pollution in the Southeastern Massachusetts Air Pollution Control District, 310 CMR 7.05(4), 7.06, and 7.17. Among other things, these regulations govern coal ash content, visible emissions, and emission of particulates, respectively, and are part of the federally approved State Implementation Plan. The order contains emission limitations, compliance

schedules, interim control measures, coal specifications, and provides for emission, air quality and coal monitoring and data reporting. Provided that NEPCO complies with the terms of the order, units 1 and 2 of the Brayton Point Generating Station may burn coal in temporary violation of 310 CMR 7.05(4), 7.06, and 7.17.

EPA proposed this order in the October 11, 1979 Federal Register (44 FR 58759). The notice of proposed rulemaking detailed the background of the order, summarized legal and procedural requirements applicable to it, and requested comments on the proposed order from all interested parties. Notice of EPA's proposed action also appeared in the *Providence Journal Bulletin* and the *Fall River Herald News* on October 2, 1979. All three publications gave notice of a public hearing, which was held on October 24, 1979 in Somerset, Massachusetts, and of the opportunity to submit public comments on or before November 12, 1979. On October 24, a public hearing was also held on the rebuttal of a regional limitation presumed applicable to the Brayton Point Generating Station. By issuing this delayed compliance order EPA accepts the regional limitation rebuttal prepared by NEPCO for Brayton Point.

Before the public hearing, but during the comment period, NEPCO made a number of suggestions on the proposed order. Most of NEPCO's comments pertained to scheduling and monitoring requirements and have been incorporated into the final order. These changes include (1.) A requirement for daily coal sampling and analysis rather than the ultimate analyses specified in the proposal for all coal cargoes, (2.) A more precise description of the opacity setting procedure and EPA's role in it, (3.) Language which makes it explicit that new coal ash specifications are on an as received basis, and (4.) Limitation of mandatory ambient air quality

monitoring to those periods when coal is burned in units 1 or 2. Because EPA determined that the proposed due dates for the preparation and submittal of stack testing reports were practicable, NEPCO's request for an additional 15 days for submitting test results has not been incorporated into the order. With reference to the second increment of progress on the proposed compliance schedule and NEPCO's request for clarifying language on "other equipment necessary for coal burning", EPA has added an increment to the compliance schedules for contracting for coal unloading tower modifications, induced draft fans, and ash handling equipment. Last, NEPCO has agreed to install a flue gas conditioning system on units 1 and 2. EPA, therefore, has modified condition 3(d) of the proposed order to require the proper operation of such systems during coal burning and has dropped the requirement to investigate other means of minimizing excess particulate emissions.

The Massachusetts Department of Environmental Quality Engineering (DEQE) also made several comments on the proposed order. Two of these comments, pertaining to conditions (2) and (5) of the proposed order, concerned wording changes and have been incorporated by EPA into the final order. DEQE also recommended that proposed condition 3(c) stipulate inspection of dust collectors immediately before units 1 and 2 stop oil burning and immediately after they begin coal burning. It was EPA's intention in proposing condition 3(c) to inspect the insides of dust collectors to check that all components were present and in good operating condition and, if not, that they would be refurbished prior to coal burning. Since this cannot be done while the units are operating, EPA is not altering this condition. Inspections of the type recommended by DEQE are not precluded and can be performed routinely. Last, based upon a review of

coal specifications and previous particulate emission testing, DEQE argued that it was quite unlikely that coal burning particulate emissions would exceed a 0.75 #/10<sup>6</sup> Btu particulate emission ceiling rather than the 0.90 #/10<sup>6</sup> Btu ceiling in EPA's proposed order. After a review of core samples from NEPCO's existing coal piles at Brayton Point, EPA has determined that, while possible, it is highly improbable that coal ash content will be so high and sulfur content so low that particulate emissions from existing coal will exceed 0.75 #/10<sup>6</sup> Btu. EPA is, therefore, revising the coal burning particulate emission ceiling in the order down to 0.75 #/10<sup>6</sup> Btu as recommended by DEQE.

Aside from DEQE and NEPCO, ten other commenters delivered statements at the public hearing. Six of these supported issuance of the delayed compliance order (generally on economic grounds), three were not in favor of the order because of past local air pollution nuisances during oil burning periods, and one statement urged caution by EPA in issuing any order to Brayton Point. In addition to its commitment to flue gas conditioning, NEPCO has developed procedures to monitor and maintain electrostatic precipitator performance, and these procedures should contribute to minimizing any local air pollution nuisances related to coal burning.

A total of seventeen letters were received during the comment period. Sixteen of the writers either did not oppose or favored coal burning under a delayed compliance order. A letter from the Rhode Island Division of Air Resources requested that an ambient air quality monitoring station be placed in nearby Rhode Island. Air quality monitors are best sited where highest pollutant levels are expected most frequently—where dispersion models predict high concentrations or there is a history of air pollution complaints. Since highest levels were not predicted in Rhode Island, the order cannot require monitoring there at this time.

In order to make the requirements of the delayed compliance order unambiguous and more pertinent to the requested relaxation in particulate emission limitations, EPA has also revised certain of the ambient monitoring requirements, reworded certain other terms of the proposed order, and included an address for NEPCO submittals.

Having considered all comments concerning the delayed compliance order requested by NEPCO and having revised the proposal of October 11, 1979 accordingly, the order below is hereby issued effective November 28, 1979.

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

Dated: November 16, 1979.

Barbara Blum,  
Administrator.

Part 55 of Chapter I, Title 40 of the Code of Federal Regulations is amended by adding a new Subpart W as follows:

**Subpart W—Massachusetts**

**§ 55.470 Delayed compliance order.**

The Administrator hereby issues a Delayed Compliance Order on the following conditions.

(a) The sources shall comply with the following Primary Standard Conditions which will assure that particulate emissions from coal burning do not cause or contribute to violations of the national primary ambient air quality standards for suspended particulates.

(1) Coal burning particulate emissions (denoted by R in units of #/10<sup>6</sup> Btu heat input) as measured by EPA reference test methods shall not exceed the limits given by the following formulas, dependent on coal sulfur (S) and ash (A) percentages by weight (dry basis) rounded off to the nearest 0.1 percent at the time of stack testing:

- (i) For  $S < 0.8\%$   
 $R = 0.0591 \times A$
- (ii) For  $0.8\% \leq S < 1.0\%$   
 $R = 0.0341 \times A$
- (iii) For  $1.0\% \leq S < 1.3\%$   
 $R = 0.0281 \times A$
- (iv) For  $1.3\% \leq S$   
 $R = 0.0215 \times A$
- (v) Particulate emissions from coal burning shall at no time exceed 0.75 #/10<sup>6</sup> Btu.

(2) The coal burned under this Order shall consist of:

(i) Coal supplies on the premises of the Brayton Point Generating Station as of October 1, 1979 (existing coal), and

(ii) Such new shipments of coal as NEPCO procures for use at the Brayton Point Generating Station (new coal) provided that all cargoes of new coal comply with State regulations on sulfur content and that no such cargo has an average ash content as received in excess of 10 percent by weight.

(b) The sources shall attain compliance with Regulations 7.05(4), 7.06, and 7.17 (for particulates) of the Southeastern Massachusetts Air Pollution Control District (SEMPCD) no later than the dates specified in the following Compliance Schedules:

Unit 1	Unit 2	Increment of Progress
Completed	Completed	Enter into contracts for additional or modified electrostatic precipitators.
November 20, 1979	November 20, 1979	Submit for approval to the Director of the EPA Region I Enforcement Division (the Director) contracts for additional or modified electrostatic precipitators necessary for coal burning in compliance with SEMPCD Regulations.
November 30, 1979	November 30, 1979	Enter into contracts for coal unloading tower modifications and the purchase of induced draft fans and of ash handling equipment necessary for long-term coal burning by the sources.
August 1, 1980	August 1, 1980	Revert to residual oil firing for the purpose of refurbishing coal handling equipment. However for cause and with the written consent of the Director, the source may revert to residual oil firing for the purpose of refurbishing coal handling equipment no later than November 1, 1980. Thereafter, the sources shall burn no coal until additional electrostatic precipitator capacity has been installed.
July 1, 1981	November 1, 1980	Insite on-site construction or installation of electrostatic precipitators.
June 30, 1982	December 31, 1981	Complete on-site construction or installation of electrostatic precipitators.
July 31, 1982	January 31, 1982	Demonstrate compliance with SEMPCD Regulations 7.05(4), 7.06, and 7.17 while burning coal.

Notwithstanding the above, not later than 90 days after recommencing coal burning, NEPCO must submit the results of emission tests performed in accordance with 40 CFR Part 60 demonstrating compliance with SEMPCD Regulations 7.05(4), 7.06, and 7.17.

At any time during the effective period of this Order, the Director may request and within fourteen (14) days shall receive a detailed written update from NEPCO on the progress of the long-term conversion of the sources to coal burning in compliance with SEMPCD regulations.

(c) The sources shall comply with the following Interim Requirements which will assure compliance with SEMAPCD Regulations to the fullest extent reasonable and practicable. These Interim Requirements shall additionally avoid any imminent and substantial endangerment to the public health and will not preclude enforcement under section 303 of the Act when appropriate:

(1) Within thirty (30) days of initial coal burning in each unit under this Order, NEPCO shall have conducted particulate emission tests, in conjunction with those required by condition 4(c), for the purpose of proposing to the Director opacity limitations suitable for enforcement under this Order. These emission tests shall be conducted using methods and under conditions approved by EPA. Within fifteen (15) days of completing such tests NEPCO shall submit a written report to EPA including an analysis of test results supporting a proposed opacity limitation applicable to coal burning by the sources. The Director shall within fifteen (15) days of receipt of such test reports and analyses, determine an opacity limitation for enforcement under this Order. If test reports, a proposed opacity limitation, and an analysis supporting it, have not been submitted by NEPCO within forty-five (45) days of initial coal firing in each source, SEMAPCD Regulation 7.06 shall apply. EPA may, on its own initiative, require that NEPCO perform additional particulate emission testing for the express purpose of revising such opacity limits to reflect changing operating conditions or burning of new coal. NEPCO shall notify the Director in writing within five (5) days of the date on which each of the Ordered sources starts burning new coal. As a minimum a second set of particulate emission tests shall be performed within thirty (30) days, and reported on within forty-five (45) days, of the date each source starts burning new coal as determined by the Director.

(2) Within thirty (30) days of the date of effectiveness of this Order, NEPCO shall submit for approval a procedure acceptable to the Director for quantifying the contribution of coal burning particulate emissions by the sources to HiVol ambient particulate at samples. This procedure shall be based upon the chemical and physical characteristics of such HiVol samples and of fuel samples or samples from particulate emission tests. Within sixty (60) days of the date of effectiveness of this Order, and thereafter for its duration while the sources burn coal, NEPCO shall be prepared to apply this

procedure to HiVol samples selected by EPA. Within thirty (30) days of notification by EPA, NEPCO shall submit a written report to the Director on the contribution in micrograms per cubic meter of coal burning particulate emissions to such HiVol samples.

(3) NEPCO shall provide the Director with seven (7) days prior written notice of the date on which each of the sources shall go off line in order to start coal burning under this Order. NEPCO shall also allow EPA to inspect the operating conditions of particulate emission controls on the Ordered sources both immediately after the units go off line and immediately before initial coal firing under this Order.

(4) NEPCO shall install a flue gas conditioning system on each source before initial coal burning. Within thirty (30) days of initial coal burning NEPCO shall submit for approval by the Director a detailed program for minimizing particulate emissions by the continued proper operation and maintenance of these flue gas conditioning systems. Adherence by NEPCO to the requirements of this program shall be enforceable under this Order.

(d) The sources shall comply with the following Monitoring and Reporting Requirements to assure that primary standard conditions and interim requirements are met throughout the duration of this Order:

(1) NEPCO shall perform proximate analyses of all cargoes of new coal off-loaded at the Brayton Point Generating Station and daily analyses for sulfur, moisture, ash, and high heating value for coal burned under this Order. Further, for the duration of this Order, NEPCO shall maintain records of coal cargo sizes, and coal analyses. Samples of coal as fired daily shall also be retained for ultimate or trace element analyses as necessary for compliance with condition 3(b). Sampling and analysis methods used to comply with these requirements shall be those proposed in writing to, and approved with any necessary revisions by, the Director.

(2) NEPCO shall continuously monitor and record emissions from the Ordered sources using methods and in a manner specified by the Director. Within fifteen (15) days of the date of the effectiveness of this Order, NEPCO shall submit to the Director a plan to implement such continuous emission monitoring, which as a minimum shall comply with the requirements of 40 CFR 51 Appendix P as revised with the written approval of the Director.

(3) Within thirty (30) days of initial coal burning by each source under this Order, NEPCO shall perform particulate emission tests using the reference

methods of 40 CFR 60 under conditions approved by the Director in writing prior to initial coal burning. Within fifteen (15) days of the completion of such tests, NEPCO shall submit to the Director a full test report, detailing fuel analyses, percent of maximum operating capacity, operating condition of the electrostatic precipitators, opacity readings, chemical analyses of particulate emission samples collected, particulate emission rates, and other data pertinent to the test.

(4) NEPCO shall monitor and record ambient suspended particulate concentrations daily at a minimum of four (4) sites while the sources burn coal under this Order. Monitoring and recording of hourly ambient sulfur dioxide concentrations and of hourly windspeed and direction shall be performed as required by the Director. This monitoring network shall meet the requirements of 40 CFR 58, Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions including Appendix B, Quality Assurance; Appendix C, Monitoring Methodology; and Appendix E, Probe Siting. Ambient air monitoring methods and site locations must be proposed in writing for approval by the Director within fifteen (15) days of the date of the effectiveness of this Order. The Director may make any necessary revisions to this monitoring plan and any such plan shall be applicable to the sources and enforceable under this Order.

(5) Reports of coal cargo shipment sizes, coal analyses, aerometric data and excess emissions (to include opacity) shall be submitted to the Director within fifteen (15) days of the close of each month in a format approved and/or revised by the Director. Aerometric data shall also be submitted quarterly in machine readable SAROAD format.

(6) All proposals, notifications, and reports required by this Order from NEPCO shall be addressed to:

Director, Enforcement Division, Region I,  
Environmental Protection Agency, 2103 J. F.  
Kennedy Federal Building, Boston,  
Massachusetts 02203, Attention: Air  
Compliance Clerk.

(e) NEPCO may, if it desires, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 CFR Section 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to

NEPCO. NEPCO should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. For example, the Clean Air Act provides that "emission data" shall in all cases be made available to the public, see 42 U.S.C. 1857c-9(c).

(f) All federal, State, and local air pollution requirements applicable to the sources and not specifically relaxed or suspended by this Order shall remain in effect.

(g) Violation of any requirement of this Order shall result in one or more of the following actions:

(1) Enforcement of such requirement pursuant to subsection 113 (a), (b), or (c) of the Act, including possible judicial action for an injunction and/or penalties and in appropriate cases, criminal prosecution.

(2) Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of SEMAPCD Regulations 7.05(4), 7.06, and 7.17.

(3) If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

[FR Doc. 79-36049 Filed 11-28-79; 8:45 am]  
BILLING CODE 6560-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1033

[S.O. No. 1408]

**Chicago & North Western  
Transportation Co. Authorized To  
Operate Over Tracks of Chicago, Rock  
Island & Pacific Railroad Co. at Sibley,  
Iowa**

**AGENCY:** Interstate Commerce  
Commission.

**ACTION:** Service Order No. 1294-A.

**SUMMARY:** Authorizes the Indiana Interstate Railway Company, Inc. (IIRC), to operate over tracks owned by the City of Bicknell, Indiana, and within the corporate limits of that city. Since an emergency no longer exists, Service Order No. 1294 is vacated effective 11:59 p.m., November 21, 1979.

**FOR FURTHER INFORMATION CONTACT:**  
J. Kenneth Carter, (202) 275-7840.

**SUPPLEMENTARY INFORMATION:**

Decided: November 15, 1979.

The line of the Chicago, Rock Island and Pacific Railroad Company (RI) between Lake Park, Iowa, and Sibley, Iowa, is embargoed due to track

conditions, depriving shippers at Sibley of essential railroad service by RI. The Chicago and North Western Transportation Company (CNW) serves Sibley, Iowa, and has consented to operate over the tracks of the RI in Sibley to serve these industries. The Kansas City Terminal Railway (KCT), the directed operator of the RI, has consented to the use of these tracks by the CNW.

It is the opinion of the Commission that an emergency exists requiring the operations of CNW trains over these tracks of the RI in the interest of the public; 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,*

§ 1033.1408 Service Order No. 1408.

(a) *Chicago and North Western Transportation Company authorized to operate over tracks of Chicago, Rock Island and Pacific Railroad Company at Sibley, Iowa.* The Chicago and North Western Transportation Company (CNW) is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company (RI) at Sibley, Iowa, for the purpose of serving industries located adjacent to such tracks.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the CNW over tracks of the RI is deemed to be due to carrier's disability, the rates applicable to traffic moved by the CNW over the tracks of the RI shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 12:01 a.m., November 28, 1979.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., December 3, 1979, 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 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, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Joel E. Burns not participating.

Agatha L. Mergenovich,  
*Secretary.*

[FR Doc. 79-36560 Filed 11-27-79; 8:45 am]  
BILLING CODE 7035-01-M

# Proposed Rules

Federal Register

Vol. 44, No. 230

Wednesday, November 28, 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Ch. IX

[Docket No. F&amp;V AO-79-2]

#### Grapes Grown in Southeastern California; Hearing on Proposed Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of Hearing on a Proposed Marketing Agreement and Order for Grapes Grown in Southeastern California.

**SUMMARY:** Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and order regulating the handling of grapes grown in that portion of California south and east of the San Geronio Pass. The proposal was submitted by a group of growers and shippers of Coachella Valley Table grapes. A prenotice press release announcing the proposal, inviting public comments, and offering copies of the proposal to interested persons was released on August 17, 1979.

**DATES:** The hearing will begin on December 12, 1979, at 9:00 a.m.

**ADDRESS:** The hearing will be held in the Forbes Auditorium, Coachella Valley Water District Complex, Avenue 52 and Highway 111, Coachella, CA.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, (202) 447-5975.

**SUPPLEMENTARY INFORMATION:** The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The hearing is for the purpose of:

(a) Receiving evidence with respect to economic and marketing conditions which relate to the proposed marketing

agreement and order, hereinafter set forth, and any appropriate modifications thereof;

(b) Determining whether the handling of grapes produced in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement or order regulating the handling of grapes produced in the area; and,

(d) Determining whether provisions specified in the proposal or some other provisions appropriate to the terms of the Agricultural Marketing Agreement Act of 1937, as amended, will tend to effectuate the declared policy of the act.

The provisions of the proposed marketing agreement and order follow. Those sections identified with asterisks (\*\*\*) apply only to the proposed marketing agreement. These provisions have not received the approval of the Secretary of Agriculture.

This proposal has been reviewed under the USDA criteria for implementing Executive Order 12044, and has been classified "significant". A Draft Impact Analysis is available from Malvin E. McGaha, Chief, Fruit Branch Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 447-5975.

#### Definitions

##### §.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

##### §.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674).

##### §.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

##### §.4 Grapes.

"Grapes" means any variety of vinifera species table grapes grown in the production area.

##### §.5 Production Area.

"Production Area" or "Area" are synonymous and mean the portion of the State of California south and east of the San Geronio Pass.

##### §.6 Varieties.

"Varieties" means and includes all classifications or subdivisions or *Vitis Vinifera* table grapes.

##### §.7 Producer.

"Producer" is synonymous with grower and means any person who produces grapes for the fresh market and who has a proprietary interest therein.

##### §.8 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of grapes owned by another person) who handles grapes or causes grapes to be handled.

##### §.9 Registered Handler.

"Registered Handler" means any handler who has facilities within the production area for preparing grapes for the fresh market and has been registered as such by the committee.

##### §.10 Handle.

"Handle" is synonymous with "ship" and means to pack, sell, load in a conveyance for transportation, transport or in any way to place grapes in the current of commerce within the production area or between the production area and any point outside thereof. The term "handle" also means to deliver grapes to a storage facility, either within the production area or outside thereof. The term shall not include the transportation, sale or delivery of field run grapes to a person within the production area who is a registered handler.

##### §.11 Pack.

"Pack" means (a) to place grapes into containers for shipment to market as fresh grapes or (b) the specific arrangement, weight, grade or size, including the uniformity thereof, of the grapes within a container.

##### §.12 Fiscal period.

"Fiscal period" is synonymous with "fiscal year" and means the 12 month period beginning on January 1 of one year and ending on the last day of December of that year or such other period as the committee, with the

approval of the Secretary, may prescribe.

#### §.13 Container.

"Container" means a box, bag, crate, carton or any other receptacle used in packing grapes for shipment as fresh grapes and includes the dimensions, capacity, weight, marking and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein.

#### §.14 Committee.

"Committee" means the California Desert Grape Administrative Committee established under §.20.

#### Administrative Body

#### §.20 Establishment and membership.

(a) There is hereby established a California Desert Grape Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member. Five of the members and their alternates shall be producers or officers or employees of producers (producer members). Five of the members and their alternates shall be handlers or officers or employees of handlers (handler members). One member and alternate shall be either a producer or handler or officer or employee thereof. One member and alternate shall represent the public.

(b) Not more than one member and alternate member shall be affiliated with the same packinghouse.

(c) The committee may, with the approval of the Secretary, provide such other allocation of producer or handler membership, or both, as may be necessary to assure equitable representation.

#### §.21 Term of office.

The term of office of the members and alternates shall be one fiscal period. Each member and alternate shall serve during the term of office for which that person is selected and is qualified and shall continue to serve until a successor is selected and has qualified.

#### §.22 Nomination.

(a) The Secretary shall cause to be held, not later than January 15 of each year, meetings of producers and handlers for the purpose of making nomination for members and alternate members of the committee.

(b) Only producers, including duly authorized officers or employees of producers, who are present at such nomination meetings may participate in

the nomination and election of nominees for producer members and their alternates. Each producer entity shall be entitled to cast only one vote. If a person is both a producer and a handler of grapes, such person may vote either as a producer or as a handler but not as both.

(c) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings may participate in the nomination and election of nominees for handler members and their alternates. Each handler entity shall be entitled to cast only one vote. If a person is both a producer and a handler of grapes, such person may vote either as a producer or as a handler but not as both.

(d) One member and alternate member shall be nominated by a vote of both producers and handlers and may be of either group.

(e) The public member and alternate member shall be nominated by the committee. The committee shall prescribe, with the approval of the Secretary, procedures for the nomination of the public member and qualification requirements for such member.

#### §.23 Selection.

The Secretary shall select members and alternate members of the committee from persons nominated pursuant to §.22 or from other qualified persons.

#### §.24 Failure to nominate.

If nominations are not made within the time and in the manner specified in §.22 the Secretary may select the members and alternate members of the committee without regard to nominations on the basis of the representation provided for in §.20.

#### §.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

#### §.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§.22 and .23. If the names of the nominees to fill any such vacancy are not made available to the Secretary

within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in §.20.

#### §.27 Alternate members.

An alternate member shall act in the place of the member during such member's absence and may be assigned other program duties by the chairman or the committee. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified. In the event that both a producer member and that member's alternate are unable to attend a committee meeting, the member or committee members present may designate any other alternate to serve in such member's place at that meeting provided such action is necessary to secure a quorum.

#### §.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

#### §.29 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause it books to be audited by a competent public accountant at least once each fiscal period and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to grapes;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as may be requested; and

(k) To investigate compliance with the provisions of this part.

#### §.30 Procedure.

(a) Eight members of the committee shall constitute a quorum and any action of the committee shall receive at least eight concurring votes;

(b) The committee may vote by telephone, telegraph, or other means of communication; and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

#### §.31 Compensation and expenses.

The members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided*, That the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

#### §.32 Annual report.

The committee may, as soon as practicable after the close of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report. This report will be reviewed at an annual meeting scheduled to coincide with nomination meetings.

#### Expenses and Assessments

#### §.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §.41.

#### §.41 Assessments.

(a) Each person who first handles grapes shall pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after a fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later findings by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all grapes handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments in the current period's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed time shall be subject to the interest or late payment charge, or both.

#### §.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected: *Provided*, That any sum paid by a person in excess of that person's pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding

obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time the assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; or (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practicable such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee under this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

#### Research and Market Development

#### §.45 Production research and market research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve or promote the marketing, distribution and consumption or the efficient production of grapes. The expense of such projects shall be paid from funds collected pursuant to this part.

#### Regulations

#### §.50 Marketing policy.

Each season prior to making any recommendation pursuant to §.51 the

committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

- (a) The estimated total production of grapes within the production area;
- (b) The expected general quality of grapes in the production area;
- (c) The expected demand conditions for grapes;
- (d) The expected shipments of grapes produced in the production area;
- (e) The probable prices for grapes;
- (f) Supplies of competing commodities, including foreign produced grapes;
- (g) Trend and level of consumer income;
- (h) Other factors having a bearing on the marketing of grapes; and
- (i) The type of regulations expected to be recommended during the marketing season.

#### §.51 Recommendation for regulation.

Upon complying with the requirements of §.50 the committee may recommend regulations to the Secretary whenever it finds that such regulations as are provided in this part will tend to effectuate the declared policy of the act.

#### §.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section the handling of grapes upon finding from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulation may: (1) Limit in any or all portions of the production area the handling of particular grades, sizes, qualities, or packs, or any combination thereof, of any or all varieties of grapes during any period or periods; (2) limit the handling of particular grades, sizes, qualities, or packs of grapes differently for different varieties, for different portions of the production area, or any combination of the foregoing during any period or periods; (3) limit the handling of grapes by establishing in terms of grades, sizes, or both, minimum standards of quality and maturity; (4) fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of grapes; (5) establish holidays by prohibiting throughout the production area the packaging or loading, or both, of grapes on Sunday; and (6) prohibit the packing or loading, or both, of grapes except during specified consecutive hours of any calendar day or days:

*Provided*, That any handler may, in accordance with regulations recommended by the committee and approved by the Secretary, package or load grapes, or both, during a comparable period in the same day or a later day as specified by the committee.

(b) No handler may handle grapes that were packed, or loaded, or both, during any period when such packing or loading or both was prohibited by any regulation issued under paragraph (a)(5) and (6) of this section unless such grapes are handled under §.54.

#### §.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to §.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information that a regulation should be modified, suspended, or terminated with respect to any or all shipments of grapes in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

#### §.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§.41, .52, .53, or .55, and the regulations issued thereunder, handle grapes (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§.41, .52, .53, or .55, the handling of grapes for such specific purposes (including shipments to facilitate the conduct of research and market development projects established pursuant to §.45), or in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards

as it may deem necessary to prevent grapes handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle grapes pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the grapes will not be used for any purpose not authorized by this section.

#### Inspection and Certification

##### §.55 Inspection and certification.

(a) Whenever the handling of any variety of grapes is regulated pursuant to §.52, each handler who handles grapes shall, prior thereto, cause such grapes to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall not be required for grapes which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such grapes. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided*, That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal or Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata share of such costs.

#### Reports

##### §.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of grapes as

follows: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the number and type of containers in the shipment; (5) the destination; and (6) identification of the inspection certificate or waiver pursuant to which the grapes were handled.

(b) Upon request of the committee, made with the approval of the Secretary each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal periods after the end of the fiscal period in which the transactions occurred, such records of the grapes received and disposed of by such handler as may be necessary to verify the reports such handler submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

#### Miscellaneous Provisions

##### §.61 Compliance.

Except as provided in this part, no handler shall handle grapes except in conformity with the provisions of this part and the regulations issued thereunder.

##### §.62 Right of the Secretary.

The members of the committee (including successors and alternates) and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the

Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

##### §.63 Termination.

(a) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(b) The Secretary shall terminate the provisions of this part whenever it is found by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has during the current marketing season, produced more than 50 percent of the volume of grapes which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of January subsequent to the announcement thereof by the Secretary.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

##### §.64 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. Any action by said trustee shall require the concurrence of a majority of the trustees.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same

obligation imposed upon the committee and upon the trustees.

##### §.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part; or (b) release or extinguish any violation of this part or any regulation issued under this part; or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

##### §.66 Duration of Immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

##### §.67 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States: (a) to exercise any powers granted by the act or otherwise; or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

##### §.68 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

##### §.69 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be effected thereby.

##### §.70 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same

instrument as if all signatures were contained in one original. \* \* \*

#### §.71 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party. \* \* \*

#### §.72 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of grapes in the same manner as is provided for in this agreement. \* \* \*

Copies of this notice are being mailed to all known interested persons. Other copies may be obtained from the Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250; or from the Los Angeles Marketing Field Office, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, 845 S. Figueroa St., Suite 540, Los Angeles, California 90017.

Signed at Washington, D.C. on: November 23, 1979.

William T. Moxley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-3699 Filed 11-27-79; 8:45 am]

BILLING CODE 3410-02-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 210

[Docket No. R-0262]

#### Collection of Checks and Other Items and Transfers of Funds; Automated Clearing House Items

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The action proposes that a Subpart C be added to the Board's present Regulation J, relating to the collection of checks and other items and transfers of funds. The proposed new Subpart would establish the respective duties and responsibilities of the Federal Reserve Banks and those financial depository institutions using the Federal Reserve operated electronic clearing and settlement facilities to transfer funds. These facilities are known as automated clearing house facilities.

**DATE:** Comments must be received on or before January 31, 1980.

**ADDRESS:** Comments, which should refer to Docket No. R-0262, may be mailed to Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR § 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Lee S. Adams, Senior Attorney [202/452-3594], Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** The proposal sets forth a system of rights and responsibilities governing the receipt and use of Federal Reserve electronic clearing and settlement services through automated clearing house facilities. These facilities were developed by associations of depository institutions in conjunction with the Federal Reserve as a means of reducing the growing volume and increased cost of processing paper checks.

The ACHs clear and settle both debit and credit items. Debit items include preauthorized bill payments, insurance premiums, mortgage payments, etc., and cash concentration transfers. Credit items include direct deposit of income payments and batched customer-initiated transfers, such as telephone bill payment items. At the present time, 36 Federal Reserve ACH facilities are in existence.

Automated clearing house operations and the Federal Reserve's role in such operations essentially parallel check clearing operations except that the payment information is contained on electronic media as opposed to paper checks. In ACH transactions, financial institutions create computer records of debit and credit items based upon customer instructions and deliver the media to their local Federal Reserve clearing and settlement facility, just as those institutions would deliver checks to the Federal Reserve's check collection facility. A Federal Reserve computer reads, edits, and balances the information and sorts items according to the receiving financial organization. When the processing has been completed, the computer creates output media consisting of magnetic tapes or descriptive paper listings. The Federal Reserve then sends the output media to the receiving financial organization generally using the same delivery

system as that used for delivering checks. The settlement of balances arising out of the clearing of such items is made by debiting and crediting accounts of member banks of the Federal Reserve.

The Board has published for public comment proposed rules for handling such transactions on two prior occasions, November 1973 (30 FR 32952) and January 1976 (41 FR 3097). The present proposal has been substantially revised from the earlier proposals. These revisions reflect the Board's consideration of the numerous comments received by the Board to the earlier publications and the fact that as originally proposed both Subpart B and Subpart C would have provided rules governing both large dollar amount payments and small dollar amount ACH payments. On June 23, 1977, the Board published in final form Subpart B of its Regulation J (12 CFR 210) that sets forth rules governing wire transfer of funds between member banks over the Federal Reserve communications system.

In its present form, the Subpart C proposal sets forth only the rules governing the rights and responsibilities of member banks and of financial depository institutions that are members of ACH associations that use Federal Reserve ACH facilities. Although ACH facilities are also used in connection with the Federal Reserve's participation in the federal government's recurring payments program, rules under which these facilities are used for distribution of such federal payments have previously been adopted by the United States Treasury (31 CFR 210) and, therefore, the provisions of the proposed Subpart C would not apply to such transactions. In addition, the proposed Subpart C to Regulation J does not establish rules regulating the operation of other electronic payment systems, such as automated teller machine and point-of-sale networks. The Subpart would not apply to the Federal Reserve's proposed electronic check presentment project.

The rules proposed in Subpart C would not directly relate to the rights of consumers except insofar as such rights flow from responsibilities imposed on financial depository institutions. The Board's Regulation E (12 CFR 205, 44 FR 59464, 44 FR 59474), issued under the Electronic Fund Transfer Act, would contain provisions applicable to ACH transactions. Such provisions include disclosure of terms, handling and documentation of preauthorized transfers, and error resolution procedures. That Regulation also contains limitations on liability for

unauthorized transfers, among other provisions.

In setting forth the respective rights and responsibilities of participants in ACH operations, the proposed Subpart would not modify or otherwise affect the Board's interim policy announced on January 15, 1976 (41 FR 3097) regarding depository institution access to Federal Reserve ACH facilities. Under the interim access policy, both member banks and depository institutions that are participants in local ACH associations will continue to be able to deposit items with or receive them from a Federal Reserve Bank.

Like the other Subparts to Regulation J, Subpart C is intended to govern principally the relationship between the Federal Reserve Banks and the financial depository institutions. Unlike the check collection system, which has a comprehensive system of rules provided by the UCC and case law, ACH transactions currently rely upon agreements between financial institutions involved. The Board considers it essential that a comprehensive set of rules and procedures be in place for the ACH system to operate in a reliable and efficient manner. Accordingly, section 210.76 of the proposed regulation provides that the operating circular to be issued by the Federal Reserve Banks in connection with Subpart C contain a requirement that financial depository institutions agree with each other on rules and procedures to govern the ACH transaction between them. The subject matter to be covered by such an agreement would be specified in the operating circular, such as authorization requirements, prenotification procedures and settlement rules. The detailed provisions of these agreements would be decided upon by the financial depository institutions. It is expected that the existing rules and procedures of the ACH associations and of the National Automated Clearing House Association would satisfy the requirement for such agreements. ACH rules govern ACH transactions where both parties are members of ACH associations.

As noted above, banks that are members of the Federal Reserve System but are not members of an ACH association, are enabled by the access policy to make use of ACH facilities operated by the Reserve Banks. For example, if a member bank not belonging to an ACH association wishes to originate ACH items, it must have agreements in place with the financial institutions that are to receive such items. Likewise, if a member bank not

belonging to an ACH association receives ACH items, it must have agreements with the financial institutions sending items to it. These agreements must be in writing, and either may be signed by both parties or may be in the form of a written offer to handle ACH transactions under certain specified terms. The latter alternative may be satisfied by the member bank sending a written statement of terms and conditions under which that member bank will handle the ACH transaction. If the other party continues to send ACH items to the member bank, or receives items from the member bank, the written terms and conditions would apply. The Board has considered various alternative means of assuring that transactions will be governed by rules in addition to those provided by the regulation and solicits comment on its proposal to impose the responsibility for obtaining these agreements as stated herein.

The Board believes that publication of this proposed Subpart is appropriate at this time in view of the continuing increase in the volume of ACH transactions and the benefits that would be derived from the establishment of a uniform system of rules and responsibilities applicable to all participants in Federal Reserve ACH operations. Currently, each group of depository institutions forming and participating in an ACH association enters into separate agreements and understandings among themselves and with a Federal Reserve office or offices regarding the operations of the regional ACH facility for regional and interregional transactions. Adoption of Subpart C will provide needed clarification to all parties obtaining services from an ACH as to their respective duties and responsibilities.

While this Subpart is not intended to replace rules issued by an ACH association, the rules set forth in this Subpart and the operating circulars issued pursuant to this Subpart will take precedence over any rules issued by one or more ACH associations that are inconsistent with this Subpart or the operating circulars. For example, when the proposed regulation becomes effective, it will replace existing agreements and rules under which Reserve offices act as "operator" of ACHs. On the other hand, as noted above, existing provisions of ACH rules on subjects such as authorization requirements, warranties, prenotification, and settlement will satisfy the regulation's requirements for supplemental rules. In addition, proposed section 210.81(a) permits a

recipient to reverse an entry not only by returning an item within the midnight deadline, but also by taking other action provided for in an agreement between the parties and authorized by the operating circular. It is contemplated that the circular would authorize the reversal of an entry on receipt of an adjustment for debit in error, now commonly provided for in ACH rules, if similar reversal could be made to the originator's account. An example of conceptual change without substantive effect is that the proposal defines an interoffice transaction as one where the originator and recipient maintain accounts at different Federal Reserve offices. Thus, under the proposal a transaction may be an interoffice transaction although it is between members of the same ACH association and a transaction may be an intraoffice transaction even though it is between members of different ACHs.

Under the proposed Subpart, an originator is the depository institution sending an item to a Reserve Bank's electronic clearing and settlement facility. In the case of a credit item, the originator has funds which it or its customer desires to send to another depository institution's customer or to its account at another depository institution. With regard to a debit item, the originator requests or orders funds to be delivered to it from another depository institution. The depository institution that receives an item from a Federal Reserve Bank is referred to as the recipient. In these ACH transactions, funds may not shift at the same time the items are sent and received. Under the proposal, the time of settlement may be based upon a date specified for a grouping of items ("batch") that may be independent of, although subsequent to, the time of receipt of the magnetic tape containing the items by the recipient. The settlement and return times stated in the proposal may be modified as further experience with these transactions is gained.

The Federal Reserve Banks would assume the standard of ordinary care in handling and processing items under this Subpart. That standard is currently applied with respect to check collections under Subpart A and wire transfers of funds under Subpart B, and is the standard usually adopted by banks in dealing with customers. A Reserve Bank does not act as agent or subagent of the originator of an item, but is performing the functions of a clearing house.

The regulation also applies to the clearing and settlement by the Federal Reserve Bank of New York for ACH items sent through the New York

Automated Clearing House. Under proposed section 210.77(c), a Reserve Bank may receive and send items though a privately operated ACH and settle for such transactions by means of debits and credits to accounts held at the Reserve Bank. The operating circular of such a Reserve Bank would contain special provisions for such services.

This notice is published pursuant to § 553(b) of Title 5, United States Code, and § 262.2(a) of the Rules of Procedure of the Board of Governors. The proposal is made under the authority of sections 11 and 16 of the Federal Reserve Act (12 U.S.C. 248 (j), (o)), that authorized the Board to promulgate rules governing the transfers of funds through Federal Reserve Banks. To aid in the consideration of this material by the Board, interested persons are invited to submit relevant data, views, comments, or arguments.

To implement its proposal, the Board is considering amending Regulation J (28 CFR Part 210) as set forth below:

1. Paragraph (a) of § 210.2 would be amended, but without change in footnotes, to read as follows:

**§ 210.2 Definitions.**

(a) The term "item" means any instrument for the payment of money, whether negotiable or not, which is payable in a Federal Reserve district, <sup>1</sup> is sent by a sender or a nonbank depositor to a Federal Reserve Bank for handling under this subpart, and is collectible in funds acceptable to the Federal Reserve Bank of the district in which the instrument is payable, except that the term does not include any check that cannot be collected at par, <sup>2</sup> or any item as defined in § 210.52(a) or § 210.71(j) of this part.

2. Paragraph (a) of § 210.52 would be amended to read as follows:

**§ 210.52 Definitions.**

(a) The term "item" means any instrument for the payment of money, issued, transmitted, or received in accordance with this subpart, except that the term does not include any item as defined in § 210.2(a) or § 210.71(j) of this part.

3. Part 210 would be amended by adding after § 210.65 the following:

**Subpart C—Clearing and Settlement of Credit and Debit Items**

Sec.	
210.70	Authority, purpose, and scope.
210.71	Definitions.
210.72	General provisions.
210.73	Sending items to reserve banks.
210.74	Originator's agreement.

Sec.	
210.75	Recipient's agreement.
210.76	Supplemental agreements.
210.77	Handling items.
210.78	Time limits
210.79	Settlement.
210.80	Advice of debit.
210.81	Revocation of items.
210.82	Return of items.
210.83	Return of funds.
210.84	Extension of time limits.
210.85	Reserve Bank liability.

Authority: 12 U.S.C. 248(j), (a).

**§ 210.70 Authority, purpose, and scope.**

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, paragraph 1 of section 13, as amended (12 U.S.C. 342), paragraph (f) of section 19, as amended, (12 U.S.C. 464), paragraphs 13 and 14 of section 16 (12 U.S.C. 360, 248(o)), paragraphs (i) and (j) of section 11 (12 U.S.C. 248 (i) and (j)), and other laws. This subpart governs the clearing and settlement by Federal Reserve Banks ("Reserve Banks") of credit and debit items recorded on magnetic tape or other approved media, but it does not apply to wire transfers of funds governed by Subpart B or federal recurring payments, governed by 31 Code of Federal Regulations, Part 210. Its purpose is to provide rules for the transfer of bank balances on the books of financial depository institutions and Reserve Banks. This subpart and the operating circulars of the Reserve Banks preempt or supersede agreements only to the extent that provisions of those arrangements are inconsistent with this subpart and the operating circulars.

**§ 210.71 Definitions.**

As used in this subpart, unless the context otherwise requires:

(a) "Account holder" means a member bank, a Reserve Bank, or another institution maintaining an account with a Reserve Bank.

(b) "Actually and finally collected funds" means settlement that is, or has become, final and irrevocable.

(c) "Approved medium" means any of the following media if specified in the operating circular of the originator's Reserve Bank: any form of communication, other than voice, registered on (or in form suitable for being registered on) magnetic tape, disc, or other medium designed to contain in durable form conventional signals used for electronic communication of messages, or output produced from this form of communication.

(d) "Automated clearing house" means a facility, other than a Reserve Bank, that clears debit and credit items for financial depository institutions.

(e) "Banking day" means a day during which a Reserve Bank, depositor, originator, or recipient is open to the public for carrying on substantially all its banking functions.

(f) "Credit item" means an item sent to a Reserve Bank by an originator for debit to the originator's account and for credit to a recipient's account.

(g) "Customer" means a party designated in an item for whose account the originator or recipient sends or receives the item.

(h) "Debit item" means an item sent to a Reserve Bank by an originator for credit to the originator's account and for debit to a recipient's account.

(i) "Interoffice transaction" means a transaction between an originator and recipient that do not maintain or use accounts at the same Reserve Bank office.

(j) "Item" means a writing contained in an approved medium that evidences a right to the payment of money and that is sent to a Reserve Bank for clearing and settlement under this subpart. "Item" does not include: (1) an item subject to Subpart A governing the collection of checks and other items; (2) an item subject to Subpart B governing wire transfers of funds; (3) a credit payment subject to 31 Code of Federal Regulations, Part 210, governing federal recurring payments by means other than by check; or (4) wire transfer of U.S. Treasury or federal agency securities by a Reserve Bank. An item is deemed to be the same item even if the medium in which it is contained changes during handling of the item.

(k) "Originator" means an account holder or other financial depository institution that maintains or uses an account with a Reserve Bank for settlement under this subpart and that is authorized by that Reserve Bank to send a credit or debit item to it.

(l) "Originator's account" or "recipient's account" means the account at its Reserve Bank maintained or used by the originator or recipient, respectively, under a special arrangement between the Reserve Bank and the account holder, for settlement under this subpart.

(m) "Originator's Reserve Bank" or "recipient's Reserve Bank" means the Reserve Bank office at which the originator or recipient, respectively, maintains or uses an account.

(n) "Recipient" means an account holder or other financial depository institution that is authorized by a Reserve Bank to receive a credit or debit item from the Reserve Bank.

(o) "Settlement date" means the date for settlement of an item as provided in § 210.79(c).

**§ 210.72. General provisions.**

(a) *General.* Each Reserve Bank shall clear and settle for items in accordance with this subpart, and shall issue an operating circular governing the details of its handling of items and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things, set minimum or maximum dollar amounts and specific format requirements for items, and impose charges for handling items.

(b) *Binding effect.* This subpart and the Reserve Banks' operating circulars are binding on each originator, recipient, and customer, and on each account holder agreeing to settle for items under this subpart.

(c) *Government originators and recipients.* Except as otherwise provided by statutes of the United States, or regulations issued or arrangements made thereunder, this subpart and the operating circulars of the Reserve Banks apply to the following when acting as an originator or recipient: a department, agency, instrumentality, independent establishment or office of the United States, or a wholly owned or controlled government corporation, that maintains or uses an account with a Reserve Bank.

**§ 210.73 Sending items to reserve banks.**

(a) An originator may send an item to its Reserve Bank only if it arranges to have in its account, at the opening of its Reserve Bank's banking day on the settlement date, a balance of actually, and finally collected funds sufficient to cover the amounts of credit items to be debited to the account on that day. The Reserve Bank has a security interest in the assets of the originator, and of the account holder whose account the originator uses for settlement, in the possession of, or held for the account of, the Reserve Bank if:

(1) The balance in the originator's account at the close of the Reserve Bank's banking day on the settlement date is not sufficient to cover the amounts debited to the account during that day; or

(2) The originator suspends payment or is closed at any time during the Reserve Bank's banking day on the settlement date, and does not have a balance in its account sufficient to cover the amounts debited to the account.

(b) In an interoffice transaction, the originator's Reserve Bank may permit or require the originator to send the item direct to the recipient's Reserve Bank. If an item is sent direct, the relationships and the rights and liabilities between the originator, its Reserve Bank, and the recipient's Reserve Bank are the same as if the originator had sent the item to its Reserve Bank and that

Reserve Bank had sent the item to the recipient's Reserve Bank.

(c) An originator may send a notification of an item it intends to send in the future to its Reserve Bank for handling as if the notification were an item, except that no funds will be transferred. A recipient may return the notification to its Reserve Bank for return to the originator.

**§ 210.74 Originator's agreement.**

(a) By sending an item to a Reserve Bank, the originator:

(1) Warrants to the recipient that the item is sent in accordance with this subpart and the Reserve Bank's operating circulars;

(2) Authorizes its Reserve Bank and the recipient's Reserve Bank to handle the item in accordance with this subpart and the Reserve Banks' operating circulars;

(3) Authorizes its Reserve Bank (i) to debit the amount of a credit item to the originator's account at the opening of its Reserve Bank's banking day on the settlement date, and (ii) to credit the amount of a debit item to the originator's account on the settlement date; and

(4) Agrees to indemnify each Reserve Bank handling the item for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from any action taken by the Reserve Bank in accordance with this subpart and the Reserve Banks' operating circulars.

(b) The warranty, authorizations, and indemnity in paragraph (a) of this section do not limit any other warranty, authorization, or indemnity made by an originator to a recipient or a Reserve Bank.

**§ 210.75 Recipient's agreement.**

(a) A recipient designated in an item, by maintaining or using an account with a Reserve Bank for settlement under this subpart and receiving an item from the Reserve Bank:

(1) Authorizes its Reserve Bank to credit or debit the amount of the item to the recipient's account on the settlement date; and

(2) Agrees to indemnify each Reserve Bank handling the item for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from a breach of the foregoing authorizations or from the recipient's failure to comply with this subpart and the Reserve Banks' operating circulars.

(b) The authorization and indemnity in paragraph (a) of this section do not limit any other authorization or indemnity made by a recipient to a Reserve Bank.

**§ 210.76 Supplemental agreements.**

Each Reserve Bank shall include in its operating circulars a provision requiring the originator or recipient of an item to warrant to each Reserve Bank handling the item that the originator and recipient have agreed to provisions governing specified matters that are not covered by this subpart but which are necessary for the efficient and reliable handling of credit and debit items. The Reserve Bank may impose the warranty requirement on an originator or recipient taking into consideration the requirements of existing supplemental systems of rules.

**§ 210.77 Handling items.**

(a) *Intraoffice transactions.* If an originator and recipient maintain or use accounts at the same Reserve office, that office shall send or make available any item it receives to the recipient.

(b) *Interoffice transactions.* (1) The originator's Reserve Bank shall handle an interoffice transaction by sending the item to the recipient's Reserve Bank, which shall send the item or make it available to the recipient.

(2) With the agreement of the recipient's Reserve Bank, the originator's Reserve Bank may send or make an item available directly to the recipient. This subpart applies as though the originator's Reserve Bank had sent the item to the recipient's Reserve Bank and that Reserve Bank had sent the item or made it available to the recipient.

(c) *Automated clearing houses.* (1) An originator may send an item to a Reserve Bank through an automated clearing house, and a Reserve Bank may send an item to a recipient through an automated clearing house. In either case, the Reserve Bank shall debit or credit the originator's or recipient's account, as the case may be, with the amount of the item. The debit or credit may be commingled with other entries to be posted to the account in connection with the settlement of clearings at the automated clearing house.

(2) The rights and duties of an originator or recipient and a Reserve Bank sending or receiving an item through an automated clearing house are the same as though the item had been sent direct to, or received direct from, the Reserve Bank.

**§ 210.78 Time limits.**

(a) *Time schedule.* Each Reserve Bank shall include in its operating circulars a schedule showing the hours during which it accepts items and returned items. The schedule will show the minimum and maximum number of days, in advance of the date specified

for settlement of the item, during which the Reserve Bank accepts the item ("date limitations"). When the specified date is outside the date limitations, the Reserve Bank will not accept the item.

(b) *Acting seasonably.* A Reserve Bank acts seasonably if it takes proper action on the banking day it receives an item. Taking proper action within a reasonably longer time may be seasonable but the Reserve Bank has the burden of so establishing. (c) *Transactions after time limit.* A Reserve Bank is not required to act on the day it receives an item if the Reserve Bank receives the item after the time shown in its schedule. In emergency or other unusual circumstances, a Reserve Bank may handle items before or after the hours or days shown on its schedule of time limits. No action taken under this paragraph is binding on any other Reserve Bank.

#### § 210.79 Settlement.

(a) *Recipient's Reserve Bank.* The recipient's Reserve Bank, on the settlement date, shall credit or debit the recipient's account in the amount of the item and shall debit or credit in the same amount the originator's account, or, in an interoffice transaction, the account of the originator's Reserve Bank.

(b) *Originator's Reserve Bank.* In an interoffice transaction, the originator's Reserve Bank, on the settlement date, shall debit or credit the originator's account in the amount of the item, and shall credit or debit in the same amount the account of the recipient's Reserve Bank.

(c) *Settlement date.* Settlement for an item shall take place on:

(1) The date specified in an item or its accompanying medium for payment of the item ("specified date"); or

(2) The date shown for settlement in the Reserve Bank's operating circulars, when:

(i) The specified date is earlier than the date limitations referred to in § 210.78(a);

(ii) The specified date is not a banking day for the originator, the recipient, the account holder whose account either of them use for settlement, or a Reserve Bank involved with the transaction; or

(iii) There is no specified date.<sup>1</sup>

(d) *Right to use funds.* A Reserve Bank may, at any time until its opening of business on the banking day following the settlement date, refuse to permit the

use of credit given for a debit item for which the Reserve Bank has not received actually and finally collected funds. Credit given by a Reserve Bank for a credit item is available for use on the settlement date, subject to the Reserve Bank's right to apply the funds to an obligation owed to it.

(e) *Suspension or closing of financial institution.* A Reserve Bank shall not settle for an item after it receives notice of the suspension or closing of the originator, the recipient, or an account holder whose account the originator or recipient uses for settlement.

(f) *Credit to customer.* If the amount of a credit item is to be paid to a customer, the recipient shall credit to the customer's account, or make available to the customer, the amount of the item on the settlement date, unless the recipient returns an item in accordance with section 210.82 of the this Subpart.

#### § 210.80 Advice of debit.

An account holder is deemed to approve, on its own behalf, and on behalf of an originator or recipient using the account holder's account for settlement, the accuracy of the advice of debit to its account unless it sends to its Reserve Bank written objection within 10 calendar days of receiving the advice of debit.

#### § 210.81 Revocation of Items.

(a) No originator or prior party has a right to revoke an item after it has been received by a Reserve Bank. A Reserve Bank may, on request by the originator, revoke an item by (1) Returning the item; (2) asking the recipient to return the item or funds that have been transferred; or (3) asking the recipient's Reserve Bank to return the item or to ask the recipient to return the item or funds that have been transferred, as the case may be. If an item is so returned, all debits and credits previously made in settlement of the item shall be reversed.

(b) A Reserve Bank may, on its own initiative, cease acting on an item (1) if, because of circumstances beyond its control, it is unable to handle the item in accordance with this subpart and its operating circular; or (2) in the case of a credit item, if the originator's Reserve Bank judges that there may not be sufficient funds in the originator's account on the settlement date to cover the item. A Reserve Bank shall promptly notify the originator and a recipient to which it has sent an item, or their Reserve Bank, of nonpayment of the item.

(c) A Reserve Bank may initiate a reversing batch of items promptly after it discovers that it sent a duplicate or erroneous batch of items. The Reserve

Bank shall notify the originator or its Reserve Bank accordingly.

#### § 210.82 Return of Items.

(a) A recipient has the right to reversal of a credit or debit made under § 210.79 of this subpart by returning the item to the Reserve Bank from which the item was received before midnight of the recipient's banking day next following (1) the settlement date; or (2) the banking day of receipt, whichever is later. A recipient also has the right to reversal of a credit or debit by taking other action as specified in an agreement between the originator and recipient and as authorized in the Reserve Banks' operating circulars. A recipient shall return an item in the medium and format specified in the operating circular of its Reserve Bank.

(b) In an interoffice transaction, the recipient's Reserve Bank shall send a returned item to the originator's Reserve Bank.

(c) A recipient that returns an item to a Reserve Bank: (1) warrants to the originator and to each Reserve Bank handling the item that it took all action necessary to recover its settlement within the time limits of this subpart and other law; and (2) agrees to indemnify each Reserve Bank handling the item for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from the Reserve Bank's action in returning the item, or in reversing a debit or credit previously made in settlement for the item. A Reserve Bank shall not have or assume any responsibility for determining whether the action taken by a recipient was timely.

#### § 210.83 Return of funds.

(a) A Reserve Bank that receives a returned item in accordance with § 210.82 of this subpart shall reverse the debit and credit previously made in settlement of the item.

(b) A Reserve Bank that does not receive actually and finally collected funds in settlement of a debit item in accordance with § 210.79 of this subpart, shall, at or before the opening of business on the banking day following the settlement date, reverse the debit and credit previously made in settlement of the item, whether or not the item is available for return. The Reserve Bank shall promptly notify the originator and the recipient, or their Reserve Banks, of the reversal.

#### § 210.84 Extension of time limits.

If, because of circumstances beyond its control, an originator, recipient, or Reserve Bank is delayed in acting on an item beyond applicable time limits, the

<sup>1</sup> When a recipient's Reserve Bank expects that an item will not be delivered to the recipient by the date scheduled for delivery, the settlement date will be the date the Reserve Bank gives telephone advice of the item to the recipient, as provided in the Reserve Bank's operating circular.

time for acting is extended for the time necessary to complete the action; if the originator, recipient, or Reserve Bank exercises such diligence as the circumstances require.

#### § 210.85 Reserve Bank liability.

(a) *Limitations on liability.* A Reserve Bank shall be responsible or liable only to an originator, a recipient, a customer, or another Reserve Bank, and only for its own lack of good faith or failure to exercise ordinary care. A Reserve Bank shall not act as the agent or subagent of another bank or person and shall not be liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for the loss or destruction of an item in transit or in the possession of others. A Reserve Bank shall not make or be deemed to make any warranty with respect to an item it handles under this Subpart.

(b) *Measure of damages.* The measure of damages for a Reserve Bank's failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the use of ordinary care. Where there is bad faith, the measure of damages includes other damages, if any, suffered by the party as a proximate consequence.

(c) *Reliance on routing designation appearing on item.* A Reserve Bank may handle an item based on the routing number or other designation of a recipient appearing in any form on the item when the Reserve Bank receives it. A Reserve Bank shall not be responsible for any delay resulting from its acting on a designation, whether or not the designation is consistent with any other designation appearing on the item.

(d) *Right to indemnity.* A Reserve Bank shall indemnify another Reserve Bank that handles an item for any loss or expense sustained (including attorneys' fees and expenses of litigation) as a result of the former Reserve Bank's failure to exercise ordinary care or to act in good faith in an interoffice transaction.

(e) *Limitation on claims.* No claim may be made by any person against a Reserve Bank for loss resulting from the Reserve Bank's handling of an item after one year from the settlement date of the item.

(f) *Recovery by Reserve Bank.* If an action or proceeding is brought against a Reserve Bank that has handled an item, based on:

(1) The alleged breach of, or the alleged failure to have the authority to make, any of the warranties, representations, authorizations and agreements referred to in sections 210.74, 210.75, 210.82, or 210.85 of this

subpart, by the originator, the recipient or another Reserve Bank; or

(2) Any action by the Reserve Bank in accordance with this subpart and its operating circulars;

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the originator, the recipient or the other Reserve Bank, as the case may be, any amount the Reserve Bank is required to pay under the judgment or decree, together with interest, as well as the amount of attorneys' fees and other expenses of litigation incurred.

(g) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (f) of this section by charging the originator's or recipient's account (or if the item was received from or sent to another Reserve Bank, by charging the other Reserve Bank through the Inter-District Settlement Fund), if

(1) The Reserve Bank has made a seasonable written demand on the originator, recipient, or other Reserve Bank to assume defense of the action or proceeding; and

(2) No other arrangement for payment acceptable to the Reserve Bank has been made.

A Reserve Bank that has been charged through the Inter-District Settlement Fund may recover from the originator or recipient in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreements referred to in sections 210.74, 210.75, 210.82, and 210.85.

By order of the Board of Governors of the Federal Reserve System, November 28, 1979.  
Theodore E. Allison,  
Secretary of the Board.

[FR Doc. 79-35339 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 433

#### Amendment to Trade Regulation Rule Concerning Preservation of Consumer's Claims and Defenses

##### Correction

In FR Doc. 79-35266, appearing at page 65771 in the issue of Thursday, November 15, 1979, the following changes should be made:

1. On page 65772, second column, the third word in the ninth line of § 433.2(b) should read "partial".

2. On page 65772, third column, the fourth word in the third line of the

paragraph designated "1," should read "altered".

3. On page 65773, second column, the first word following the heading "NOTICE" should read "ANY" and the last word in the first paragraph of small point should read "contract".

BILLING CODE: 1505-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA 5739]

#### National Flood Insurance Program Proposed Base Flood Elevations for the Village of Cahokia, Ill.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base flood elevations described below.

The proposed base 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-days following the second publication of this proposed rule in the 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 base flood elevations are available for review at 103 Main Street, Cahokia, Illinois.

Send comments to: Honorable Michael King, 103 Main Street, Cahokia, Illinois 62208.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6570 or toll free line (800) 424-8872.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administrator gives notice of the proposed base flood elevations for the Village of Cahokia, Illinois, 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) (presently

appearing at its former Section 24 CFR 1917.4(a)).

Zone designations and base (100-year) flood 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. The proposed base flood 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 determinations are:

Portions of the C Zone north of Judith Lane have been changed to an A3 Zone (408 Base Flood Elevation), B Zone, and AH Zone (405 Base Flood Elevation).

Also, a portion of the AH Zone north of the Bi-State Parks Airport has been changed to a C Zone.

(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. 79-36579 Filed 11-27-79; 8:45 am]

BILLING CODE 6718-03-M

P.O. Box 3136QT, Anchorage, Alaska 99510.

**FOR FURTHER INFORMATION CONTACT:**  
James Branson, Executive Director (907) 274-4563.

Dated: November 21, 1979.

Winfred H. Meibohm,  
*Executive Director, National Marine Fisheries Service.*

[FR Doc. 79-36534 Filed 11-27-79; 8:45 am]

BILLING CODE 3510-22-M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 676

#### North Pacific Fishery Management Council; Extension of Public Comment Period

**AGENCY:** National Marine Fisheries Service, Interior.

**ACTION:** Extension of Public Comment Period.

**SUMMARY:** The Federal Register notice of October 29, 1979, (44 FR 61983), announcing public hearings on the Draft Fishery Management Plan (DFMP) for the Bering Sea-Chukchi Sea Herring Fishery, has been amended.

**DATES:** The public comment period has been extended until January 31, 1980.

**ADDRESS:** Send comments to North Pacific Fishery Management Council,

# Notices

Federal Register

Vol. 44, No. 230

Wednesday, November 28, 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.

## CIVIL AERONAUTICS BOARD

[Docket No. 36941; Order 79-11-159]

### Boston Environmental Study; Order Deferring Action

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of November 1979.

We established the Boston Environmental Study by Order 79-10-133 on October 22, 1979. This study will assess the potential environmental effects of multiple permissive entry on Boston's Logan airport and surrounding neighborhoods. It is an environmental assessment required by the National Environmental Policy Act and pertinent regulations under that act.

Order 79-10-133, dated October 22, 1979, directed our staff to meet with Massport officials to discuss the environmental study. These discussions were held on October 29, October 31, and November 1, 1979.<sup>1</sup> The two staffs have agreed on the technical content of the environmental assessment. The Study as agreed upon is more comprehensive and will require more time than the original 90 days allowed the staff. We agree that a more comprehensive Study is desirable. Therefore, we will extend the time for its completion approximately five additional weeks and fix the deadline as February 29, 1980.

Accordingly, 1. We defer action on the Boston portion of the dockets listed in Appendix A of Order 79-10-133;

2. We direct our staff to complete the Boston Environmental Study by February 29, 1980;

3. Petitions for reconsideration of this order shall be filed in Docket 36941 (The Boston Environmental Study) no later than December 3, 1979; and

<sup>1</sup>The discussions were recorded and will be placed in Docket 36941 as soon as they have been transcribed.

4. We will serve a copy of this order upon all carriers listed in Appendix A of Order 79-10-133, Massachusetts Port Authority; Mayor of Boston; Airport Manager of Logan Airport; Massachusetts Secretary of Transportation.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board.  
Phyllis T. Kaylor,<sup>1</sup>  
*Secretary.*

[FR Doc. 79-36680 Filed 11-27-79; 8:45 am]  
BILLING CODE 6320-01-M

[Docket No. 37139; Order 79-11-153]

### Denver-Philadelphia Show Cause Proceeding

**AGENCY:** Civil Aeronautics Board.  
**ACTION:** Notice of Order 79-11-153, Denver-Philadelphia Show Cause Proceeding, Docket 37139.

**SUMMARY:** The Board is proposing to grant Denver-Philadelphia nonstop authority to Continental Airlines, USAir, Western Airlines, and Piedmont Aviation and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

**DATES:** Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than December 28, 1979, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

**Additional Data:** All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than December 13, 1979.

**ADDRESSES:** Objections or Additional Data should be filed in Docket 37139, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

**FOR FURTHER INFORMATION CONTACT:** Susan Bliss, B-72, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825

<sup>1</sup>All Members concurred except Member O'Melia who did not vote.

Connecticut Avenue, NW., Washington, D.C. 20428. (202) 673-5334.

**SUPPLEMENTARY INFORMATION:** Objections should be served upon the following persons: Continental Airlines; USAir, Western Air Lines, and Piedmont Aviation; the city of Denver and the city of Philadelphia, the managers of the Denver and Philadelphia airports; and State Aviation Officials in Colorado and Pennsylvania.

The complete text of Order 79-11-153 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. Person outside the metropolitan area may send a postcard request for Order 79-11-153, the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Bureau of Domestic Aviation:  
November 21, 1979.

Phyllis T. Kaylor,  
*Secretary.*

[FR Doc. 79-36681 Filed 11-27-79; 8:45 am]  
BILLING CODE 6320-01-M

[Docket No. 37135; Order 79-11-147]

### Denver-Cleveland/New York Show-Cause Proceeding

**AGENCY:** Civil Aeronautics Board.  
**ACTION:** Notice of Order 79-11-147, Denver-Cleveland/New York Show-Cause Proceeding, Docket 37135.

**SUMMARY:** The Board is proposing to grant nonstop air route authority under section 401 of the Federal Aviation Act of 1958, as amended, between the terminal point Denver and the alternate terminal points Cleveland and New York (La Guardia and Kennedy Airports) to Continental Air Lines, Western Air Lines, USAir, and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

**DATES:** Objections: All interested persons having objection to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than December 27, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

**Additional Data:** All existing and additional applicants who have not filed (a) illustrative service proposals, (b)

environmental evaluations, and (c) estimates of fuel to be consumed in the first year and statements of fuel availability are directed to do so no later than December 12, 1979.

**ADDRESSES:** Objections to the issuance of a final order, or additional data as described above, should be filed in the Docket 37135, which we have entitled the *Denver-Cleveland/New York Show-Cause Proceeding*. They should be addressed to the Docket Section Civil Aeronautics Board, Washington, D.C., 20428.

**FOR FURTHER INFORMATION CONTACT:** Samuel J. Lebowich, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., 20428, (202) 673-5329.

**SUPPLEMENTARY INFORMATION:** Objections and additional applications with the accompanying data should be served upon the following persons: Continental Air Lines, Western Air Lines and USAir, the Mayors and Airport Managers of Denver, Cleveland, Pittsburgh, New York (LGA and JFK) and Newark, the Departments of Transportation of New Jersey, New York, Ohio and Pennsylvania, the Aviation Transportation Section of the Colorado Department of Highways, and the Port Authority of New York and New Jersey.

By the Civil Aeronautics Board: November 21, 1979.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 79-36684 Filed 11-27-79; 8:45 am]  
BILLING CODE 6320-01-M

[Docket No. 37133; Order 79-11-145]

#### Houston-Tulsa Subpart Q Proceeding

**AGENCY:** Civil Aeronautics Board.  
**ACTION:** Notice of Order to Show Cause in the Houston-Tulsa Subpart Q Proceeding, Order 79-11-145, Docket 37133.

**SUMMARY:** The Board is proposing to award nonstop air route authority between Houston and Tulsa to Texas International Airlines and Ozark Air Lines under the expedited procedures of Subpart Q of its Procedural Regulations. Texas International's and Ozark's applications both involve the removal of a certificate restriction. The tentative findings and conclusions will become final if no objections are filed.

The complete text of this order is available as noted below.

**DATES:** Objections: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall

file, by December 26, 1979, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings should be served upon all parties listed below.

**ADDRESSES:** Objections to the issuance of a final order should be filed in Docket 37133, which we have entitled the *Houston-Tulsa Subpart Q Proceeding*. They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Texas International Airlines, Ozark Air Lines, the Texas Aeronautics Commission, the Governor, State of Oklahoma, Houston International Airport, the Tulsa Airport Authority, and the Mayors of Houston and Tulsa.

**FOR FURTHER INFORMATION CONTACT:** Neil G. Whitehouse, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5328.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 79-11-145 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-11-145 to that address.

By the Civil Aeronautics Board: November 21, 1979.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 79-36685 Filed 11-27-79; 8:45 am]  
BILLING CODE 6320-01-M

[Docket No. 67134; Order 79-11-146]

#### Wichita Authority Show-Cause Proceeding

**AGENCY:** Civil Aeronautics Board.  
**ACTION:** Notice of Order 79-11-146, Wichita Authority Show-Cause Proceeding, Docket 37134.

**SUMMARY:** The Board is proposing to grant nonstop air route authority between the terminal point Wichita and the alternate terminal points Albuquerque, Chicago, El Paso, Kansas City, St. Louis, Los Angeles, San Diego, San Francisco, Phoenix, Tucson, Houston, Las Vegas, and Salt Lake City to Continental Air Lines, USAir, Western Air Lines, Ozark Air Lines and Piedmont Aviation and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of

this order is available as shown as noted below.

**DATES:** Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than December 28, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

**ADDITIONAL DATA:** All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year and a statement of fuel availability are directed to do so no later than December 13, 1979.

**ADDRESSES:** Objections or Additional Data should be filed in Docket 37134, Docket Section, Civil Aeronautics Board, Washington, D.C., 20428.

**FOR FURTHER INFORMATION CONTACT:** James F. Adley, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., 20428, (202) 673-5412.

**SUPPLEMENTARY INFORMATION:** Objections should be served upon the following persons: Continental Air Lines, USAir, Western Air Lines, Ozark Air Lines and Piedmont Aviation.

The complete text of Order 79-11-146 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79-11-146 to that address.

By the Civil Aeronautics Board: November 21, 1979.

Phyllis T. Kaylor,  
Secretary.

[FR Doc. 79-36683 Filed 11-27-79; 8:45 am]  
BILLING CODE 6320-01-M

## DEPARTMENT OF COMMERCE

### Industry and Trade Administration

#### Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, December 18, 1979, at 1:30 p.m. in Room B841, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Hardware Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor performance tables and further investigation of total systems performance; and (2) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12085, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be

discussed during the meeting should be exempted from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the meeting will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the subcommittee during the meeting have been properly classified under Executive Order 11652 or 12085. All subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcommittees thereof, was published in the Federal Register on September 14, 1978 (43 FR 41073).

For further information, contact Ms. Margaret A. Cornejo, Policy Planning Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-2583.

Dated: November 21, 1979.

Kent Knowles,  
*Director, Office of Export Administration,  
Bureau of Trade Regulation, U.S. Department  
of Commerce.*

[FR Doc. 79-36664 Filed 11-27-79; 8:45 am]  
BILLING CODE 3510-25-M

#### Maritime Administration

#### Proposed Legislation Authorizing Sale of Two Vessels in National Defense Reserve Fleet for Conversion and Use in Domestic Commerce

Notice is hereby given that H.R. 4088 has been introduced and is under consideration by the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries. The bill would authorize the sale of two C1-M-AV1 vessels, which are now in the National Defense Reserve Fleet at Suisun Bay, California; to Coast Line Company, a Maine corporation, for the purpose of conversion and operation in the domestic commerce of the United States. The bill currently provides that the sales price would be the appraised value for operation or scrap value in the domestic market, whichever is greater as of the date of sale. As introduced, the bill further provides that any conversion work shall be performed in the United States; the vessels shall be documented

and operated under the laws of the United States; and if the vessels are scrapped within five years after the date of sale they shall be scrapped in the domestic market. The specific intended use for these vessels after conversion, according to information available to the agency, would be as container feeder vessels on the East Coast of the United States. The Chairman, House Committee on Merchant Marine and Fisheries, has requested that this agency publish notice of each bill introduced that would authorize the disposition of obsolete vessels, as information to interested persons.

Dated: November 23, 1979.

Gregory T. Diaz,  
*Acting Secretary, Maritime Administration.*

[FR Doc. 79-36679 Filed 11-27-79; 8:45 am]

BILLING CODE 3510-15-M

#### National Oceanic and Atmospheric Administration

#### New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: Groundfish, Scallop, and Herring Oversight Hearing (O/S) Committee Reports, and other Council business.

DATES: The meeting will convene on Wednesday, December 12, 1979, at approximately 10 a.m. and will adjourn on Thursday, December 13, 1979, at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Radisson Ferncroft Hotel, Ferncroft Drive, Ferncroft Village, Danvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts 01960, Telephone: (617) 535-5450.

Dated: November 23, 1979.

Winfred H. Meibohm,  
*Executive Director, National Marine  
Fisheries Service.*

[FR Doc. 79-36652 Filed 11-27-79; 8:45 am]

BILLING CODE 3510-22-M

### North Pacific Fishery Management Council and Advisory Panel; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The North Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) and its Advisory Panel (AP) will hold joint and separate meetings.

**DATES:** The Council meeting will convene on Thursday, December 13, 1979, at 8:30 a.m. and will adjourn at approximately 5 p.m., with the Alaska Board of Fisheries in the Alaska Room of the Anchorage/Westward Hilton Hotel. The AP meeting will convene on Tuesday, December 11, 1979, at 9:30 a.m. and will adjourn at approximately 5 p.m. at the Council Conference Room, 333 W. 4th Avenue, Suite 32, Anchorage, Alaska. The Council and the AP meeting will convene on Wednesday, December 12, 1979, at 8:30 a.m., Friday, December 14, 1979, at 8:30 a.m. and will adjourn at approximately 5 p.m. on both days in the Aleutian Room on December 12, 1979, and in the Alaska Room on December 14, 1979, of the Anchorage/Westward/Hilton Hotel, 3rd & E Streets, Anchorage, Alaska. The meetings are open to the public. The meetings may be extended or shortened depending on progress on the agenda.

**FOR FURTHER INFORMATION CONTACT:** North Pacific Fishery Management Council, Post Office Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274-4563.

Proposed Agendas follow:

#### Council

**SPECIAL NOTE:** Preregistration (except in special or unusual cases) will be required for all public comments which pertain to a specific agenda topic. Preregistration is accomplished by informing the Agenda Clerk by 10 a.m. of the first day of the agenda item to be addressed and the time requested. Preregistration and public comment may be scheduled for: *F. Old Business: G. Fishery Management Plans: H. New Business* agenda items. There will be a general comment period (Agenda K) scheduled for late afternoon of the third day for testimony on matters not on the current agenda. Ten (10) minutes will be allotted for each person or group. Regular Council business and reports will be heard: Executive Director's Report, Alaska Department of Fish & Game (ADF&G) reports, National Marine Fisheries Service (NMFS) reports on foreign fishing activities, U.S. Coast Guard (USCG) report of enforcement and surveillance activities,

Scientific and Statistical (SSC) and AP reports on nonagenda items. The remaining agenda items will be discussed by the Council with each item prefaced by reports from the SSC and AP, with comments allowed by the general public. These agenda items are: *F. Old Business: F-1.* Appointment of new AP members and new chairman and *F-2.* Other business as required. *G. Fishery Management Plans: G-1.* High Seas Salmon Fishery Off the Coast of Alaska East of 175° Longitude, regarding consideration of (a) Alaska Board of Fisheries proposals as amendments to the Plan which deals with time and area closures, gear limits, mutilation and possession issues; (b) amendments prohibiting hand trolling and extending current power troll limited entry provisions. *G-2.* Tanner Crab Off Alaska, giving consideration to Alaska Board of Fisheries Proposals as amendments dealing with fish ticket reporting, Bering Sea seasons, and some guideline harvest levels. *G-3.* Draft Herring of the Bering/Chukchi Seas. Preliminary reports from the public hearings and discussion with the Alaska Board of Fisheries on management measures proposed in the draft Fishery Management Plan (FMP). *G-4.* Draft Halibut Off the Coast of Alaska. Consider enabling legislation for the renegotiated International Pacific Halibut Convention. *G-5.* Gulf of Alaska Ground-fish, Amendments to (a) reduce sablefish Optimum Yield (OY), (b) establish inseason authority allowing the Regional Director to make time and area closures for gear conflicts or establish closed areas by FMP amendment to protect fixed fishing gear, and (c) readdress Council policy on area closures to foreign fishing (i.e., joint venture processing ships). *G-6.* Bering Sea/Aleutian Islands Groundfish, Amendments: (a) relax domestic restrictions in the Bristol Bay pot sanctuary and winter halibut savings area, and (b) establish inseason field order authority. *H. New Business: H-1.* Joint meeting with Alaska Board of Fisheries to develop a Memorandum of Understanding, and joint management proposals for Tanner Crab, Troll Salmon, and Bering Sea Herring. *H-2.* Increase in SSC membership. *H-3.* Change indates of January Council meeting. *H-4.* State Department Reports. *H-5.* Review and make recommendations on Joint Venture Applications from Korea, U.S.S.R. and permit applications from ships that have committed serious violations of the Fishery Conservation and Management Act (FCMA) in 1979. *I. Reports, Contracts, and Proposals: I-1.* Proposals

to assess the distribution and abundance of certain marine mammal populations in Bristol Bay. *I-2.* A draft Request for Proposal (RFP) to provide information regarding halibut limited entry. *I-3.* Contract #78-5, draft final report. *I-4.* Other business as required. *J. Finance Report. K. General Comment Period. L. Chairman's Closing Remarks and M. Adjournment.*

#### Advisory Panel

*F-1.* Same agenda as Council.

Winfred H. Meibohm,  
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-36588 Filed 11-27-79; 8:45 am]

BILLING CODE 3510-22-M

### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing a New Export Visa Requirement and Exempt Certification for Cotton, Wool and Man-Made Fiber Textile Products from the Republic of the Philippines

November 21, 1979.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Establishing a new visa and exempt certification mechanism for cotton, wool and man-made fiber textile and apparel products exported from the Philippines.

**SUMMARY:** The Governments of the United States and the Republic of the Philippines have exchanged letters dated August 1 and 8, 1979, concerning a new visa and exempt certification mechanism, established as an administrative arrangement pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the two governments.

**EFFECTIVE DATE:** January 1, 1980 for textile and apparel products exported on and after that date. Textile and apparel products that have been exported before January 1, 1980 and which have been visaed or certified in accordance with the previous administrative arrangement shall not be denied entry.

**FOR FURTHER INFORMATION CONTACT:** Carl Ruths, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377/5423).

**SUPPLEMENTARY INFORMATION:** On and after January 1, 1980, cotton, wool and man-made fiber textile and apparel products exported from the Philippines which are subject to the terms of the bilateral agreement shall be visaed with a circular stamp in order to be entered

or withdrawn from warehouse for consumption in the United States. Shipments of textile and apparel products which are exempt from the quantitative levels of the bilateral agreement shall be certified by the Government of the Republic of the Philippines prior to exportation using a rectangular-shaped stamp. The basis for exemption shall be stated on the certification by the use of a description, such as, "Macrame products," "Less than \$250," or the name of a particular traditional folklore product which has been designated for exemption. Invoices for certified exempt items shall not include any textile or apparel products that are not agreed to be exempt.

Merchandise imported for the personal use of the importer, and not for resale, does not require a visa or certification for entry, regardless of value.

Shipments shall be visaed or certified by the placing of original stamped markings (the visa or certification) in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used). Each visa and certification will include its number and date and the signature of the issuing official. The visa shall also state the correct categories and quantities in the shipment in applicable category units. However, if the quantity indicated on the export visa is more than that of the shipment, entry shall be permitted.

Facsimiles of the visa and exempt certification stamps are published as enclosures to the letter to the Commissioner of Customs which follows this notice.

The Government of the Republic of the Philippines has authorized the following officials to issue visas and exempt certifications:

- Luis R. Villafuerte, Chairman, Garments and Textile Export Board
- Aida B. Cabardo, Officer-in-Charge, Garments and Textile Export Board Secretariat
- Antonio T. Carpio, Chairman, Garments and Textile Export Board Technical Committee

Interested persons are advised to take all necessary steps to insure that textile products, produced or manufactured in the Philippines, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the stated visa and certification requirements.

Paul T. O'Day,  
Acting Chairman, Committee for the Implementation of Textile Agreements.  
November 21, 1979.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,  
Department of the Treasury,  
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of August 31, 1976, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool and man-made fiber textile products in designated categories for which the Government of the Republic of the Philippines had not issued an appropriate export visa or exempt certification.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on January 1, 1980 and until further notice, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile and apparel products in Categories 300-369, 400-469 and 600-669, produced or manufactured in the Philippines and exported on and after January 1, 1980, which are not visaed or certified for exemption in accordance with the procedures outlined below. Cotton, wool and man-made fiber textile products which have been exported before January 1, 1980 and visaed or certified in accordance with previously established requirements shall not be denied entry.

Cotton, wool and man-made fiber textile and apparel products exported from the Philippines on and after January 1, 1980 shall be visaed with a circular stamp in order to be entered into the United States for consumption or withdrawn from warehouse for consumption.

Certain cotton, wool and man-made fiber textile and apparel products which are exempt from the levels of restraint shall be certified by the Government of the Republic of the Philippines prior to exportation using a rectangular-shaped stamp. The basis for exemption shall be stated on the certification by the use of a description, such as "Macrame products", "Less than \$250, or the name of a particular traditional folklore product which is listed on the enclosure to this letter.

Merchandise shall be visaed or certified by the placing of original stamped markings (the visa or certification) in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used). Each visa and certification shall include its number and date and the signature of the issuing official. The visa shall also state the correct categories and quantities in the shipment in applicable category units, except, if the

quantity indicated on the visa is more than that of the shipment, entry shall be permitted. Otherwise, the categories and quantities shall be those determined by the U.S. Customs Service, or the shipment shall be denied entry.

Facsimiles of the visa and certification stamps are enclosed, as are the names of the officials authorized by the Government of the Republic of the Philippines to issue visas and certifications.

Merchandise imported for the personal use of the importer, and not for resale, does not require a visa or certification for entry, regardless of value.

Merchandise covered by an invoice which has an exempt certification but contains both exempt and non-exempt textile products shall not be permitted entry.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textile and apparel products, produced or manufactured in the Philippines and exported to the United States, notwithstanding the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton, wool and man-made fiber textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Paul T. O'Day,  
Acting Chairman, Committee for the Implementation of Textile Agreements.

Republic of the Philippines  
OFFICE OF THE PRESIDENT  
**GARMENTS & TEXTILE EXPORT BOARD**

**TEXTILE VISA**

CATEGORY	QUANTITY
_____	_____
_____	_____
_____	_____

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

NO. \_\_\_\_\_ DATE \_\_\_\_\_

Republic of the Philippines  
OFFICE OF THE PRESIDENT  
GARMENTS & TEXTILE EXPORT BOARD

CERTIFICATE NO.

EXEMPTED ITEMS

DESCRIPTION

CERTIFIED ON

AUTHORIZED SIGNATURE

Philippine Traditional Folklore Handicraft  
Textile Products

Philippine items are traditional Philippine products, cut, sewn, or otherwise fabricated by hand in cottage units of the cottage industry. The following is the agreed list of such items:

Batik and Hablon Fabrics—Hand Woven  
Fabrics of the Cottage Industry.

Banaue Cloth—Cotton Handloom Fabrics in  
Multi-Colors.

Other Hand Woven and Handloom Fabrics of  
the Cottage Industry.

Articles and Garments Made by Hand from

Hand Woven and Handloomed Fabrics,  
Hand Crocheted Garments, Shawls, Hats,  
and Accessories, Including the "Catsa  
Group" Type Garments (Heavily Hand  
Crochet Work in Combination with Coarse  
Greige or Dyed Cotton Fabric or Batik  
Fabric).

Macrame Handicraft Articles, Hand Plied or  
Braided and Hand Tied, Not Combined  
With Woven or Knit Material (Except if  
such material is used for non-essential  
decorative and ornamental purposes).

Officials Authorized by the Government of  
the Republic of the Philippines To Issue Visas  
and Certifications for Exemption for Textile  
and Apparel Products Exported to the United  
States

Luis R. Villafuerte, Chairman, Garments and  
Textile Export Board

Aida B. Cabardo, Officer-in-Charge,  
Garments and Textile Export Board,  
Secretariat

Antonio T. Carpio, Chairman, Garments and  
Textile Export Board Technical Committee

[FR Doc. 79-36439 Filed 11-27-79; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE  
IMPLEMENTATION OF TEXTILE  
AGREEMENTS

Amending Import Restraint Levels for  
Certain Cotton, Wool and Man-Made  
Fiber Textile Products From the Polish  
People's Republic

November 23, 1979.

AGENCY: Committee for the  
Implementation of Textile Agreements.

ACTION: Amending the bilateral  
agreement with Poland for the  
agreement year which began on January  
1, 1979 to (1) establish a specific ceiling  
for men's and boys, zippered cotton  
sweatshirts (only T.S.U.S.A. 380.0611) in  
Category 334 with a designated  
consultation level as a sub-ceiling for all  
other men's and boys' cotton coats in  
the category; (2) decrease the specific  
ceiling for men's and boys' cotton knit  
shirts in Category 338 and establish a  
specific sub-ceiling within the category  
for other non-ornamented knit shirts in  
T.S.U.S.A. 380.0652; (3) establish a sub-  
ceiling for men's and boys' other coats  
of man-made fibers in Category 634; and  
(4) increase the minimum consultation  
levels for cotton bedspreads and quilts  
in Category 362 and terry and other  
cotton pile towels in Category 363, raise  
the designated consultation level for  
men's and boys' other wool coats in  
Category 434 and control imports in  
those categories at the increased levels.  
(A detailed description of the textile  
categories in terms of T.S.U.S.A.  
numbers was published in the Federal  
Register on January 4, 1978 (43 FR 884),  
as amended on January 25, 1978 (43 FR  
3421), March 3, 1978 (43 FR 8828), June  
22, 1978 (43 FR 26773), September 5, 1978  
(43 FR 39408), January 2, 1979 (44 FR 94),  
March 22, 1979 (44 FR 17545), and April  
12, 1979 (44 FR 21843)).

SUMMARY: The Governments of the  
United States and the Polish People's  
Republic have exchanged notes further  
amending the Bilateral Cotton, Wool  
and Man-Made Fiber Textile Agreement  
of January 9 and 12, 1978, as amended,  
to adjust the levels of restraint  
established for cotton, wool and man-  
made fiber textile products in Categories  
334, 338, 362, 363, 434, and 634 during the  
agreement year which began on January  
1, 1979 and extends through December  
31, 1979.

EFFECTIVE DATE: December 3, 1979.

SUPPLEMENTARY INFORMATION: On  
January 3, 1979, there was published in  
the Federal Register (44 FR 931) a letter  
dated December 27, 1978 from the

Chairman of the Committee for the  
Implementation of Textile Agreements  
to the Commissioner of Customs which  
established levels of restraint for certain  
specified categories of cotton, wool and  
man-made fiber textile products,  
produced or manufactured in Poland,  
which may be entered into the United  
States for consumption, or withdrawn  
from warehouse for consumption, during  
the twelve-month period which began  
on January 1, 1979 and extends through  
December 31, 1979. In the letter  
published below the Chairman of the  
Committee for the Implementation of  
Textile Agreements directs the  
Commissioner of Customs to adjust the  
previously established levels of restraint  
for textile products in Categories 334,  
338, 434 and 634 and to control the  
increased levels of restraint established  
for cotton textile products in Categories  
362 and 363, pursuant to the terms of the  
most recent amendment to the bilateral  
agreement. The sub-limit for Category  
338 (Only T.S.U.S.A. 380.0652) has been  
adjusted for carryforward used in 1978,  
amounting to 10,833 dozen.

Paul T. O'Day,

Acting Chairman, Committee for the  
Implementation of Textile Agreements.

November 23, 1979

Committee for the Implementation of Textile  
Agreements

Commissioner of Customs,  
Department of the Treasury, Washington,  
D.C.

Dear Mr. Commissioner: This directive  
further amends, but does not cancel, the  
directive issued to you on December 27, 1978  
by the Chairman, Committee for the  
Implementation of Textile Agreements,  
concerning imports into the United States of  
certain cotton, wool and man-made fiber  
textile products, produced or manufactured in  
Poland.

Under the terms of the Arrangement  
Regarding International Trade in Textiles  
done at Geneva on December 20, 1973, as  
extended on December 15, 1977; pursuant to  
the Bilateral Cotton, Wool and Man-Made  
Fiber Textile Agreement of January 9 and 12,  
1978, as amended, between the Governments  
of the United States and the Polish People's  
Republic; and in accordance with the  
provisions of Executive Order 11651 of March  
3, 1972, as amended by Executive Order  
11951 of January 6, 1977, you are directed to  
prohibit, effective on December 3, 1979 and  
for the twelve-month period beginning on  
January 1, 1979 and extending through  
December 31, 1979, entry into the United  
States for consumption and withdrawal from  
warehouse for consumption of cotton, wool  
and man-made fiber textile products in  
Categories 334, 338, 362, 363, 434 and 634,  
produced or manufactured in Poland, in  
excess of the following levels of restraint:

Category	Amended 12-month level of restraint <sup>1</sup>
334.....	160,049 dozen of which not more than 16,949 dozen shall be in T.S.U.S.A. numbers in the category except T.S.U.S.A. 380.0611.
338.....	467,872 dozen of which not more than 180,556 dozen shall be in T.S.U.S.A. 380.0652.
362.....	159,420 numbers.
363.....	3,000,000 numbers.
434.....	4,074 dozen.
634.....	107,797 dozen of which not more than 24,746 dozen shall be in T.S.U.S.A. 380.0405, 380.8101, 380.8109, 380.8111, and 791.7460 and not more than 36,320 dozen shall be in T.S.U.S.A. 376.5609, 380.0445, 380.5169, 380.8410, 380.8416, 380.8417 and 791.7471.

<sup>1</sup>The levels of restraint have not been adjusted to reflect any imports after December 31, 1978.

Textile products in Categories 362 and 363 which have been exported to the United States prior to January 1, 1979 shall not be subject to this directive.

Textile products in Categories 362 and 363 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of cotton, wool and man-made fiber textile products from Poland have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,  
 Paul T. O'Day,  
 Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-36649 Filed 11-27-79; 8:45 am]  
 BILLING CODE 3510-25-M

**Adjusting the Import Restraint Levels for Certain Man-Made Fiber Apparel Products From Taiwan**

November 23, 1979  
**AGENCY:** Committee for the Implementation of Textile Agreements.  
**ACTION:** Restoring unused carryforward yardage previously deducted from the level of restraint established for man-made fiber shirts in Category 638 and man-made fiber sweaters in Category 645/646, produced or manufactured in

Taiwan, bringing the level to 1,353,991 dozen for Category 638 and 3,581,720 dozen for Category 645/646 during the agreement year which began on January 1, 1979.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 [43 FR 884], as amended on January 25, 1978 [43 FR 3421], March 3, 1978 [43 FR 8828], June 22, 1978 [43 FR 26773], September 5, 1978 [43 FR 39408], January 2, 1979 [44 FR 94], March 22, 1979 [44 FR 17545], and April 12, 1979 [44 FR 21843]).

**SUMMARY:** The bilateral textile agreement of June 8, 1978, as amended, covering cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, provides, among other things, for the borrowing of designated percentages of yardage from the succeeding year's levels (carryforward). It has been determined that Taiwan did not fully utilize its requested carryforward during 1978. Action is being taken, therefore, to reduce charges previously made to the 1979 levels to account only for the amount of carryforward actually used during the 1978 agreement year.

**EFFECTIVE DATE:** November 28, 1979.

**FOR FURTHER INFORMATION CONTACT:** Shirley Hargrove, Trade and Industry Assistant, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

**SUPPLEMENTARY INFORMATION:** On December 28, 1978, there was published in the Federal Register [43 FR 60633] a letter dated December 22, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established the levels of restraint applicable to certain specific categories of cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported to the United States during the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979.

The letter published below from the Chairman of the Committee for the Implementation of Textile Agreements amends the directive of December 22, 1978, directing the Commissioner of Customs to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of textile products in excess of adjusted levels of restraint of

1,353,991 dozen for Category 638 and 3,581,720 for Category 645/646.  
 Paul T. O'Day,  
 Acting Chairman, Committee for the Implementation of Textile Agreements.  
 November 23, 1979.

Committee for the Implementation of Textile Agreements  
 Commissioner of Customs,  
 Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 22, 1978 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Cotton, Wool and Man-made Fiber Textile Agreement of June 8, 1978, as amended, concerning textile products exported from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed further to amend, effective on November 28, 1979, the adjusted twelve-month level of restraint established in the directive of December 22, 1978 for Categories 638 and 645/646 to the following:

Category	Amended 12-month level of restraint <sup>1</sup>
638.....	1,353,991 dozen.
645/646.....	3,581,720 dozen.

<sup>1</sup>The levels of restraint have not been adjusted to account for any imports after December 31, 1978.

The actions taken with respect to Taiwan and with respect to imports of man-made fiber textile products from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,  
 Paul T. O'Day,  
 Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-36650 Filed 11-27-79; 8:45 am]  
 BILLING CODE 3510-25-M

**DEPARTMENT OF DEFENSE**  
**Defense Communications Agency**  
**Scientific Advisory Group; Closed Meeting**

The DCA Scientific Advisory Group will hold a closed meeting on January 10

and 11, 1980. The January 10 and 11 meeting will be at the Defense Communications Agency, Director's Management Information Center at Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Virginia.

The agenda items will be Requirements, AUTOVON II, Data Communications, System Control and DCEC Management.

Any person desiring information about the Advisory Group may telephone (area code 202-692-1765) or write Chief Scientist—Associate Director, Technology, Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Virginia 22204.

This meeting is closed because the material to be discussed is classified and requires protection in the interest of National Defense.

(Freedom of Information Act, 5 U.S.C. 552b(c)(1))

Sheridan L. Risley,  
*Committee Management Officer.*

[FR Doc. 79-36607 Filed 11-27-79; 8:45 am]  
BILLING CODE 3510-05-M

## Department of the Air Force

### USAF Scientific Advisory Board; Meeting

November 19, 1979.

The USAF Scientific Advisory Board Ad Hoc Committee to Review the Area Dominant Military Aircraft (ADMA) Concept will meet on December 18, 1979 from 9:00 a.m. to 5:00 p.m. at the Pentagon, Washington, D.C.

The Committee will examine the ADMA Concept for Technical merit. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (4).

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Carol M. Rose,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 79-36536 Filed 11-27-79; 8:45 am]  
BILLING CODE 3910-01-M

## Department of the Navy

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee will meet on December 13-14, 1979, at the Office of Naval Research, Arlington, Virginia, and The Pentagon, Washington, D.C. The

sessions will commence at 8:00 a.m. and terminate at 5:00 p.m. on both days. All sessions of the meeting will be closed to the public.

The entire agenda for the meeting will consist of discussions of the Naval Material Command Research and Development Centers' roles, electronic warfare, radar technology, ballistic missile defense research and development, and other related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

for further information concerning this meeting, contact: Captain Jesse B. Morris, U.S. Navy, Office of Naval Research (Code 220), 800 North Quincy Street, Arlington, Virginia 22217, telephone No. (202) 696-4713.

Dated: November 20, 1979.

P. B. Walker,

*Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).*

[FR Doc. 79-36537 Filed 11-27-79; 8:45 am]  
BILLING CODE 3810-71-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2409]

### Calaveras County Water District; Availability of Staff Draft Environmental Impact Statement

November 19, 1979.

Notice is hereby given in the captioned Project, that on or about November 23, 1979, as required by 18 CFR 2.81(b), a draft environmental impact statement prepared by the staff of the Federal Energy Regulatory Commission was made available for comments. This statement deals with the environmental impact of the issuance of a Federal Energy Regulatory Commission license to Calaveras County Water District for the construction, operation, and maintenance of the proposed North Fork Stanislaus River Hydroelectric

Development Project, FERC No. 2409, consisting of: three diversion dams; one main dam and storage reservoir; two powerplants; and associated tunnels, penstocks, transmission facilities, and access roads.

This statement has been circulated for comments to Federal, State, and local agencies, has been placed in the public files of the Commission, and is available for public inspection both in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D. C. 20426 and its San Francisco Regional Office located at 555 Battery Street, San Francisco, California 94111.

Copies may be ordered from the Commission's Office of Public Information, Washington, D. C. 20426.

Any person who wishes to do so may file comments on the staff draft statement for the Commission's consideration. All comments must be filed on or before January 7, 1980.

Any person who wishes to present evidence regarding environmental matters in this proceeding must file with the Commission a petition to intervene pursuant to 18 CFR 1.8. Petitioners must also file timely comments on the draft statement in accordance with 18 CFR 2.81(c).

All petitions to intervene must be filed on or before January 7, 1980.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 79-36583 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP68-319]

### Colorado Interstate Gas Co.; Petition To Amend

November 23, 1979.

Take notice that on November 6, 1979, Colorado Interstate Gas Company (Petitioner), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP68-319 a petition to amend the Commission's order issued pursuant to Section 7(c) of the Natural Gas Act on August 5, 1968,<sup>1</sup> as amended November 11, 1975, in the instant docket so as to authorize construction of three new delivery points to facilitate the exchange of natural gas with Kansas-Nebraska Natural Gas Company (KN), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Under the original agreement, Petitioner states, it receives gas from KN at its Baker Meter Station located on the

<sup>1</sup>This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 FR 1000.1), it was transferred to the Commission.

Mocane to Campo Junction pipeline in Texas County, Oklahoma. It is stated that these natural gas deliveries to Petitioner, averaging approximately 17,000 Mcf per day on a year-round basis, originate at certain KN controlled gas supplies in Beaver and Texas Counties, Oklahoma.

According to Petitioner, it currently delivers to KN at two existing points of interconnection: (1) a gathering system interconnection between Petitioner and KN in Kearny County, Kansas; and (2) a transmission system interconnection between Petitioner and KN in Weld County, Colorado.

Petitioner requests authorization to construct and operate three additional delivery points to make redeliveries to KN. It is asserted that KN would reimburse Petitioner for construction costs of these three additional delivery points at an estimated cost of \$8,800. KN, it is stated would operate and maintain such facilities at its sole cost and expense. KN would also provide the associated metering facilities, it is stated.

The proposed delivery points are located as follows:

(1) Section 29, Township 24 South, Range 36 West, Kearney County, Kansas.

(2) Section 11, Township 24 South, Range 35 West, Kearney County, Kansas.

(3) Section 12, Township 24 South, Range 34 West, Finney County, Kansas.

Petitioner states that it was not required to make deliveries to KN during the period from December 1 to March 1 except for deliveries necessary to meet KN's requirements for serving the towns of Lakin, Deerfield and Holcomb, Kansas, not to exceed 5,000 Mcf per day, pursuant to an agreement dated August 16, 1979.

The gas delivered by it, Petitioner maintains, would be redeliveries of exchange gas provided elsewhere on its system by KN. Therefore, it is stated that there would be no net change in Petitioner's total system annual supply as a result of this proposal. Petitioner states it has adequate supplies and system capacity to accommodate the additional winter months' deliveries.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 13, 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. 79-38549 Filed 11-28-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-426]

### Colorado Interstate Gas Co.; Amendment to Application

November 19, 1979.

Take notice that on October 26, 1979, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP79-426 pursuant to Section 7(c) of the Natural Gas Act an amendment to its application filed August 2, 1979, in the instant docket so as to authorize the 1976 upgrading of two 3,300 horsepower compressors at its Mocane Compressor Station located in Beaver County, Oklahoma, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that on August 2, 1979, it filed an application with the Commission in the instant docket for authorization to construct, install, and operate three additional compressor units at its Mocane Compressor Station. That application further states that two existing 3,300 horsepower compressors at the Mocane Station, installed pursuant to an order issued August 11, 1972, in Docket No. CP72-170, as amended, were upgraded resulting in an increase of 530 horsepower to each of the units. That upgrading was done in 1976, it is stated. Applicant proposes to amend its pending application to include a request for that upgrading. Applicant states that in all other respects the pending application remains unchanged.

Applicant states that the upgrading comprised the addition of nozzles and baffles and the drilling of air passages to convey compressed air for cooling thereby allowing higher combustion and exhaust temperatures. The primary purpose of these modifications was, it is stated, not to increase capacity but to increase the fuel efficiency of the units. Applicant asserts that in fact the upgrading did not increase capacity appreciably but rather permitted a lower suction pressure at the station to help offset declining field pressures. The

modifications are also asserted to have postponed the necessity for the three additional 1,100 horsepower units proposed in the application.

The cost of upgrading the units is stated to have been \$153,368 which was financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 12, 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 or 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-38584 Filed 11-28-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2232]

### Duke Power Co.; Application for Approval of Change in Land Rights

November 19, 1979.

Take notice that an application for approval of a change in land rights was filed on May 17, 1979, by Duke Power Company (Applicant). Correspondence with Applicant should be addressed to Mr. John E. Lansche, Assistant General Counsel, Duke Power Company, Box 2178, Charlotte, North Carolina 28242. Applicant requests Commission approval to lease 1.33 acres of project land to a condominium home owners association for the construction and operation of a private marina. The lands that are the subject of the application are located in Mecklenburg County, North Carolina on the Catawba River (Lake Norman) and are located within the project boundary of Project No. 2232 (Catawba Wateree).

Mariner Villas Association Inc., (Mariner Villas) an 82 unit townhouse condominium, occupies 13 acres adjacent to the 1.33 acres of project lands which are the subject of this application. These project lands are located north of Sam Furr Road and West of Interstate 77. Mariner Villas,

through its developer, the Howey Company, Inc., requests a lease of these 1.33 acres for a proposed 100 slip private marina. Approximately 4150 cubic yards of material would be dredged from the reservoir and used in the construction of a seawall and the marina. Most of the filling in project lands has already been performed and 47 of the 100 boat slips have already been constructed without approval.

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 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comment 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 comments, protests, or petition to intervene must be filed on or before December 31, 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. 79-36565 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. SA80-16]

#### Energy Reserves Group, Inc.; Application for adjustment

November 19, 1979.

Take notice that on October 30, 1979, Energy Reserves Group, Inc. (Applicant), P.O. Box 1201, Wichita, Kansas, 67201 filed with the Federal Energy Regulatory Commission in Docket No. SA80-16 an application for an adjustment pursuant to section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR 1.41).

Applicant seeks an adjustment from § 271.502 of the Commission's regulations implementing section 105 of the Natural Gas Policy Act of 1978 (NGPA). Section 105(b)(1)(A) requires that the maximum lawful price for first sales of natural gas below the section 102 price as of November 9, 1978, will be the price under the terms of existing

contract as such contract was in effect on date of enactment.

Specifically, Applicant requests permission to increase his contract price in consideration of recompleting the West League Gas Unit No. 2, West League Field, Freestone County, Texas and in addition, Applicant will install a new string of production tubing. Such adjustment if granted, would result in an increase from the current sales price of \$.39/Mcf to \$1.75/Mcf.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission Rules of Practice and Procedure, Order No. 24, Docket No. RM79-32 (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 by December 13, 1979.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-36566 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP80-57]

#### Gas Transport, Inc.; Application

November 20, 1979.

Take notice that on October 29, 1979, Gas Transport, Inc. (Applicant), 109 North Broad Street, Lancaster, Ohio 43130, filed in Docket No. CP80-57 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing for two years the transportation and delivery of natural gas for the account of its parent, Anchor Hocking Corporation (Anchor Hocking), for direct-fired process uses at Anchor Hocking's glass container manufacturing plants located at Salem, New Jersey (Salem plant), and Winchester, Indiana (Winchester plant), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Anchor Hocking's Salem plant, supplied by South Jersey Gas Company (South Jersey), requires 800 Mcf of natural gas per day for Priority 2 feeders, which feed molten glass globs into forming machines; and annealing lehrs, which remove internal stresses from glass products after the forming process and cool the glass products under controlled heat conditions. Applicant further states that Anchor Hocking's Winchester plant, supplied by Panhandle Eastern Pipeline Company (Panhandle), requires 790 Mcf of natural gas per day for

similar Priority 2 end uses. These processes cannot utilize any fuel other than natural gas or propane air, it is asserted.

Applicant states also that the Salem plant requires 3,000 Mcf of natural gas per day in Priority 7 uses, which are other than direct-fired processes whereby raw material for glass is melted in melting tanks or furnaces. Similar Priority 7 uses are said to require 3,200 Mcf of natural gas per day at the Winchester plant. These processes may utilize oil as an alternate fuel, it is stated.

Applicant states that due to inadequate supplies of natural gas, its suppliers South Jersey and Panhandle may be unable to supply all of the above-described Priority 2 and Priority 7 process requirements of the Salem and Winchester plants, respectively. As a result, Applicant seeks a limited-term certificate which would:

(i) Authorize it to transport and/or sell and deliver natural gas for the account of its parent, Anchor Hocking, for a direct-fired process use in Anchor Hocking's Salem plant and Winchester plant;

(ii) Authorize it, on a standby basis, to transport and/or sell and deliver volumes of gas for high-priority process uses in the Salem plant during periods of curtailment, if any, by the gas distributor serving said plant, namely, South Jersey; and

(iii) Authorize it, on a standby basis, to transport and/or sell and deliver volumes of gas for high-priority process uses in the Winchester plant during periods of curtailment, if any, by Panhandle, the Winchester plant supplier.

Applicant states that the source of gas under this proposal would be either Anchor Hocking, which owns gas in various fields in West Virginia and Ohio and which would tender gas to Applicant for transportation, or independent producers who at the wellhead would make (i) direct sales of natural gas to Anchor Hocking; or (ii) sales for resale of natural gas to Applicant which, in turn, would sell and deliver it directly to Anchor Hocking for ultimate consumption. Applicant further states that what sales it would make to Anchor Hocking would be made at the price contained in a gas purchase agreement dated May 21, 1977, as most recently amended on September 2, 1979. Said agreement specifies a current price of \$2.52 for each Mcf of gas and sold and delivered.

Under this proposal, Applicant's deliveries would be made at existing points of interconnection between its facilities and those of Columbia Gas

Transmission Company (Columbia), but principally at Gravel Bank, Ohio, which is the terminus of Applicant's pipeline, it is stated, Columbia would in turn receive and transport such gas on a best-efforts basis to Transcontinental Gas Pipe Line Corporation (Transco) at an existing point of interconnection, and Transco would transport and deliver the gas on a best-efforts basis to South Jersey at an existing delivery point, it is asserted. South Jersey has, it is asserted, indicated its willingness to deliver such gas to the Salem plant through its existing distribution system.

Furthermore, regarding delivery to the Winchester plant, Columbia would transport such gas to Panhandle on a best-efforts basis, making deliveries at an existing point or points of interconnection, it is asserted.

Panhandle, in turn, would transport and deliver such volumes to the Winchester plant, also on a best-efforts basis, it is stated.

Applicant asserts that the instant proposal would obviate utilization of substantial quantities of imported residual fuel oil. Furthermore, it is asserted, several of the new wells involved in this proposal are casinghead gas wells, and it is in the public interest that production of gas be continued and encouraged so that the associated oil can be produced and recovered. Finally, Applicant states that it is in the public interest to obviate curtailment of high-priority uses, which result the proposal is said to insure.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36550 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. TC 80-40]

**Kansas-Nebraska Natural Gas Co., Inc.,  
Chase County, Imperial, Nebr.;**  
**Application for Extraordinary Relief**

November 23, 1979.

Take notice that on August 20, 1979, Chase County Board of Commissioners, Imperial, Nebraska, (Chase County) submitted a request by letter to the Federal Energy Regulatory Commission for extraordinary relief from the provisions of Section 13.B(2) of Kansas-Nebraska's FERC Gas Tariff Third Revised Volume Number 1. Said letter has been filed as a request for extraordinary relief and assigned Docket No. TC80-40.

Chase County states that it has an active Civil Defense Organization which has established a Communication Center (Center) in the Chase County Court House (Court House). It is stated that the Center is manned 24 hours a day by a dispatcher who has radio contact with the County Sheriff Personnel, City Utility Personnel, Ambulance and Doctors, Fire Department, School Buses and the County Road Department. The Court House is supplied with natural gas for heating by Kansas-Nebraska.

Chase County alleges that an electrical outage would halt communications from the Center which would handicap operations during an emergency. The Chase County letter states that in order to obviate such consequences from an electrical power outage, it proposes to install a 35 horsepower standby generator in the Court House. Chase County requests extraordinary relief from § 13.B(2) of Kansas-Nebraska's FERC Gas Tariff in order to be able to connect the generator

to the existing natural gas line currently used for heating. It is stated that the amount of natural gas used to generate electricity for one room in the Court House for short periods would be minimal. It is further stated that the City of Imperial Electrical Utility is served from the Bureau of Reclamation Grid System with back-up from Nebraska Public Power System for its electrical needs and that electrical outages are few and usually of short duration.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 18, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-36551 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. EL79-30]

**Kennebago Corp.; Declaration of  
Intention To Redevelop Hydroelectric  
Facilities**

November 19, 1979.

Take notice that on September 20, 1979, Kennebago Corporation (Declarant) filed pursuant to the Federal Power Act [16 U.S.C. § 791(a)-825(r)], a declaration of its intention to redevelop two existing hydroelectric generating sites. The intended redevelopment would occur at dam sites located on the Kennebago River in Franklin County, Maine. Correspondence with the Declarant regarding the declaration of intention should be sent to: Thomas E. Blackburn, P.O. Box 180, Mechanic Falls, Maine 04256.

Declarant intends to make repairs to two dams and their existing generating equipment and upgrade the controls and protective devices. The projects would utilize existing water rights and would be operated as run-of-the-river and also utilize storage available from Kennebago Lake during periods of low

flow. Power generated at the projects would be sold to Central Maine Power Company.

As described in the declaration of intention, the two projects would be:

(A) The Mahaney Project which would consist of (1) a 15-foot-high concrete dam; (2) a 1,700-acre reservoir (Kennebago Lake); (3) a powerhouse containing a single generating unit with a rated capacity of 160-kW and; (4) appurtenant facilities. The lake level is managed by the Kennebago Camp Owners Association between May 1st and September 30th of each year to facilitate recreational use by the residents of Kennebago Lake.

(B) The Kennebago Falls Project would consist of: (1) a 28-foot-high concrete dam; (2) a powerhouse containing two generating units for a total rated capacity of 280 kW and; (3) appurtenant facilities.

The declaration of intention was filed in accordance with section 23(b) of the Federal Power Act (Act), 16 U.S.C. 817(b). As required by the Act, the Commission will commence an investigation to determine if FERC licenses will be required for the proposed projects.

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 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments 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 comments, protest, or petition to intervene must be filed on or before December 27, 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. 79-36587 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP80-41]

**Michigan Wisconsin Pipe Line Co.;  
Application**

November 19, 1979.

Take notice that on October 23, 1979, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP80-41 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 80,000 Mcf per day of natural gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to an agreement between it and Natural dated September 28, 1979, Applicant has agreed to transport for the account of Natural up to 80,000 Mcf of natural gas per day. Applicant states that Natural would deliver such gas to Applicant at an existing interconnection between Applicant's and Natural's facilities located at Gageby Creek, Wheeler County, Texas. Applicant further states that it would redeliver such volumes at the existing Mills Ranch interconnection between Natural's and Applicant's facilities in Wheeler County and the existing Hansford interconnection between Natural's and Applicant's facilities in Hansford County, Texas. The volumes redelivered by Applicant to Natural at the Hansford interconnection would be reduced by .0075 percent to compensate Applicant for compression fuel.

Applicant states the proposed service is for the winter period commencing November 1, 1979, and ending April 1, 1980. Applicant has further agreed to render such transportation service for Natural for five subsequent winter periods if, in Applicant's judgement, its capacity on its systems would permit such service.

Natural, it is stated, would pay Applicant a monthly charge of \$46,500 as compensation for the proposed service. It is further stated that if Natural has gas available for transportation in excess of 80,000 Mcf per day and Applicant has the available capacity, Applicant has agreed to transport such additional volumes at a charge of 2.5 cents per Mcf.

It is stated that the proposed service would enable Natural to assure deliverability of all available gas in the Texas Panhandle and western Oklahoma to its curtailed customers during the 1979-80 winter heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-36588 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP80-50]

**Michigan Wisconsin Pipe Line Co.;  
Application**

November 20, 1979.

Take notice that on October 25, 1979, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP80-50 an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transportation of natural gas for Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

Applicant states that the purpose of said transportation service for Panhandle is incident to a gas storage service provided by ANR Storage Company (ANR) for Panhandle. It is stated that ANR and Panhandle have entered into a gas storage agreement dated June 1, 1979, which provides for the storage by ANR for Panhandle of between 10 Bcf and 15 Bcf of gas annually. The term of the storage service is three consecutive years commencing with the injection of gas during the 1980 summer period (April 1 through October 31). It is stated that during subsequent winter periods (November 1 through March 31), ANR would make available for redelivery to Panhandle an aggregate storage withdrawal volume equivalent to that injected during the preceding summer period. It is asserted that redeliveries are to be made at a daily rate equal to 1/100 of the aggregate injected into storage during the preceding summer period.

Applicant states that because ANR lacks sufficient storage capacity to provide storage service for Panhandle in its own storage fields, ANR has acquired the necessary storage capacity from Michigan Consolidated Gas Company (Consolidated) pursuant to a lease agreement.

Applicant states the transportation service it would perform for Panhandle is pursuant to an agreement dated June 6, 1979, which provides that during the summer period of each year during the term of the agreement Applicant would receive, transport, and redeliver to Consolidated for Panhandle up to 15 Bcf of gas, and during the winter period would redeliver the stored volumes to Panhandle for the account of ANR. It is stated that deliveries made during the summer period from Panhandle to Applicant would be made at a rate of 1/200 of the annual aggregate quantity of gas to be stored, the deliveries to be made at an existing point of interconnection between Applicant's and Panhandle's facilities located in Nobel Township, Defiance County, Ohio (Defiance interconnection). It is further stated that Panhandle would also deliver to Applicant an additional two percent of the daily quantity to be stored by ANR. Applicant, it is stated, would retain one percent of this quantity as compensation for its compressor fuel usage and would redeliver the remaining one percent to Consolidated for the account of ANR, as compensation for Consolidated's compressor fuel usage. During the winter period, Applicant states, redelivery from it to Panhandle

would also be made at the Defiance interconnection at a daily rate not in excess of 1/100 of the quantity ANR has injected into storage the preceding summer period. It is stated that deliveries during the summer period by Applicant to Consolidated for Panhandle, an redeliveries during the winter period by Consolidated to Applicant for ANR would be made at a point of interconnection between Applicant's and Consolidated's facilities at Applicant's Willow Run Meter, Station located in Ypsilanti Township, Washtenaw County, Michigan. Applicant states it would charge Panhandle a monthly rate equal to 1/12 of the product of the annual aggregate quantity which it nominates for storage service with ANR (not less than 10 Bcf), multiplied by 4.83 cents. The term of the agreement is for three consecutive years commencing April 1, 1980 and ending March 31, 1983, it is asserted.

Applicant states it lacks sufficient compressor capacity at its Defiance compressor station to provide the transportation service for Panhandle. Applicant requests authorization to retain in place an existing 1,000 horsepower class compressor unit, the installation of which was authorized by Commission order issued September 6, 1978, in Docket No. CP78-402. Applicant further states that by Commission order issued July 23, 1979, in Docket No. CP78-545, it was authorized to add an additional 1,000 horsepower of compression at its Defiance station. Applicant proposes to retain the 1,000 horsepower compressor unit in place and utilize it to afford sufficient compressor capacity to provide the transportation service for Panhandle.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 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.

Take further notice that, pursuant to

the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 79-38552 Filed 11-28-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-232]

**Natural Gas Pipeline Co. of America et al.; Petition to Amend**

November 23, 1979.

Take notice that on November 2, 1979, Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1398, Houston, Texas 77001, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP 79-232 a petition to amend the Commission's order of September 27, 1979, issued in the instant docket, pursuant to Section 7(c) of the Natural Gas Act so as to authorize the addition of Columbia Gulf Transmission Company (Columbia Gulf) as an applicant in the construction and operation of proposed joint offshore gas gathering facilities and as a co-owner in said facilities, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Natural, Transco and Texas Eastern, it is stated, filed for authorization to construct and operate facilities to connect reserves in West Cameron Block 540 (WC Block 540), offshore Louisiana, to the Stingray Pipeline Company (Stingray) facility located in West Cameron Block 550. Petitioners proposed to construct and operate 4.9

miles of 12 3/4-inch gathering pipeline from a production platform in WC Block 540 to a subsea tie-in on the Stingray system in West Cameron Block 550. The estimated cost of the facilities is \$3,627,400.

At the time they filed, Petitioners state that 38 percent of the gas reserves in WC Block 540 were uncommitted but were expected to be committed by the time the facilities were placed in service. Subsequently, Transco has acquired an additional 29 percent interest in the reserves through gas purchase contracts with Amerada Hess Corporation and Aminoil U.S.A., Inc. Columbia Gas Transmission Corporation (Columbus Gas) acquired the remaining 9 percent of the reserves through a gas purchase contract with Canso Oil & Gas, Inc. dated June 28, 1979, it is stated. Columbus Gulf an affiliate of Columbia Gas desires to become a co-owner in the subject facilities. It is stated that Columbia Gulf and Natural by letter agreement dated July 1, 1979, have further amended their transportation and exchange agreement dated October 12, 1973, authorized in Docket No. CP74-204, as amended, to add additional points of delivery on Stingray's offshore facilities in West Cameron Blocks 537 and 550. It is asserted that this amendment which was filed with the Commission on October 5, 1979, provides for the transportation and exchange of gas Columbia Gas has available from West Cameron Blocks 525 and 540.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 13, 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. 79-36553 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP79-330]

Northern Natural Gas Co.; Amendment to Application

November 19, 1979.

Take notice that on October 31, 1979, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in docket No. CP79-330 pursuant to Section 7(c) of the Natural Gas Act an amendment to its initial application filed May 30, 1979, in said docket so as to authorize the construction of the Kermit No. 2 compressor station in Section 19, Winkler County, Texas, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant initially requested authorization to construct and operate (1) an 8,000 horsepower compressor station (Uinta County No. 1) and appurtenant facilities in Uinta County, Wyoming, and (2) a 2,000 horsepower compressor station (Kermit No. 2) and appurtenant facilities in Winkler County, Texas.

Applicant herein proposes to relocate the Kermit No. 2 compressor station from Section 23 in Winkler County, Texas, as set forth in the original application, to Section 19, also located in Winkler County.

The original proposed location of the Kermit No. 2 compressor station required, it is stated, the construction of 1.4 miles of 16-inch pipeline, this being the only feasible alternative at the time since the landowner would not agree to allow construction of an access road across his land necessary to service the station.

Applicant states that the landowner advises he plans to construct a home in close proximity to the initially proposed station location, and, therefore, requests relocation of the station, such landowner providing the required right-of-way necessary to provide access to the station at the new location. Applicant further states that this has eliminated the need for the 1.4 mile pipeline.

Applicant asserts that the relocation project would result in a total cost of \$10,187,600, this cost representing a reduction of the total cost of the project, as the initial cost of the access road is less than that of the 1.4 miles of 16-inch pipeline.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 12, 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. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-36550 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP80-52]

Northern Natural Gas Co.; Application

November 21, 1979.

Take notice that on October 26, 1979, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-52 and application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)) for a certificate of public convenience and necessity authorizing the construction, during calendar year 1980, and operation of facilities to make miscellaneous rearrangements on its system, and pursuant to Section 157.7(e) of the Regulations thereunder (18 CFR 157.7(e)) for permission and approval to abandon, during the calendar year 1980, direct sales service and facilities no longer required for deliveries of natural gas to Applicant's customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the transportation and sales service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed \$300,000. Applicant further states that the cost of the proposed facilities would be financed from cash on hand.

The second stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sales

measuring, regulating and related facilities.<sup>1</sup>

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 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 157.70). 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 or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

FR Doc. 79-36554 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

<sup>1</sup>The regulations under 157.7(e) require that Applicant would abandon service and facilities only when deliveries to any one direct sales customer would not have exceeded 100,000 Mcf of natural gas during the last year of service. The regulations further require that Applicant would not abandon any service unless it would have received a written request or written permission from the customer to terminate service. In the event such request or permission could not be obtained, a statement certifying that the customer has no further need for service shall be filed with the Commission.

[Docket No. CP80-51]

**Northern Natural Gas Co.; Application**

November 21, 1979.

Take notice that on October 26, 1979, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-51 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the transportation of natural gas in interstate commerce from a new gas supply area in Zavola County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that on August 30, 1979, it entered into a gas purchase contract with the Dulce Company for the purchase of natural gas from the Spillar-Haskett and Pryor Ranch acreages located in Zavola County, Texas, resulting in the dedication to Applicant of the gas reserves of the entire 17,000 acre Spillar-Hasket block and 50 percent of gas reserves of the 15,000 acre Pryor Ranch block.

Applicant asserts that drilling activity has led to total estimated reserves of 208,000,000 Mcf of dedicated acreage, 109,000,000 Mcf of which are proved reserves and 99,000,000 Mcf of which are potential reserves. Applicant further states that it is speculated that further reserves would be developed in Zavola County which would provide additional volumes of natural gas to flow through the proposed pipeline facilities.

Applicant proposes to construct and operate two 4,500 horsepower compressor stations, to be known as Zavola County No. 1 and No. 2, approximately 6.1 miles of 12-inch pipeline, and approximately 163 miles of 16-inch pipeline to connect such stations to its existing mainline system in El Dorado, Texas. Applicant asserts that the proposed Zavola County No. 1 Station would be located in Antonio Aguirre Grant, Abstract No. 1, and the Zavola County No. 2 Station would be located in Section 45, Antonio Aguirre Grant, Abstract No. 1, all in Zavola County, Texas.

Applicant further states that the proposed 16-inch pipeline would originate at the discharge of the Zavola County No. 1 Station and would extend in a north, northwesterly direction proceeding through Zavola, Uvalde, Kennéy, Edwards, Sutton and Schleiches Counties, Texas. Applicant states that at its termination in Schleiches County, the proposed 16-inch pipeline would connect with its existing

16-inch pipeline at the discharge of its El Dorado Compressor Station. Applicant asserts that the proposed 12-inch pipeline would extend from the discharge of the proposed Zavola County No. 2 Station to the discharge of the Zavola County No. 1 Station.

Applicant states that the proposed facilities would accommodate peak daily volumes of 75,000 Mcf.

Applicant further states that the estimated total cost of the proposed facilities would be \$59,348,600, which would be financed from cash on hand or through short-term borrowings if necessary.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 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 157.70). 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 jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-36555 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP72-130]

**Prestonsburg City Utility Commission and Kentucky West Virginia Gas Co.; Petition To Amend**

November 23, 1979.

Take notice that on October 1, 1979, Kentucky West Virginia Gas Company (Petitioner), Second National Bank Building, P.O. Box 1388, Ashland, Kentucky 41101, filed in Docket No. CP72-130 a petition to amend the order of January 20, 1972<sup>1</sup> issued in the instant docket pursuant to Section 7(a) of the Natural Gas Act to authorize the delivery and sale to Prestonsburg City Utility Commission (Prestonsburg) of additional volumes of natural gas sufficient to provide service to 44 retail customers whose service might otherwise be abandoned, all as more fully set forth in the petition to amend which is on file with the Commission and open for public inspection.

The petition indicates that the said 44 retail customers presently are provided service by Equitable Gas Company (Equitable). Petitioner states that it has applied to the Commission for authorization to abandon service to Equitable in Docket No. CP79-485.<sup>2</sup>

Petitioner and Prestonsburg have entered into a new service agreement for service at the Prestonsburg metering station at Emma, Kentucky, which contract increases the former annual and daily quantities to include sufficient gas supply to serve said 44 retail gas customers.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 13, 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.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-36556 Filed 11-28-79; 8:15 am]

BILLING CODE 6450-01-M

[Docket No. CP80-46]

**Southern Natural Gas Co.; Application**

November 20, 1979.

Take notice that on October 24, 1979, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP80-46 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon by sale to Mississippi Valley Gas Company (Mississippi Valley) its Kosciusko Line, Kosciusko regulator station, and Kosciusko meter station, and for a certificate of public convenience and necessity authorizing the construction and operation of a new meter station for measurement of the deliveries of gas to Mississippi Valley into the Kosciusko line, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon by sale to Mississippi Valley approximately six miles of 4.5-inch pipeline known as the Kosciusko line, the Kosciusko regulator station and the Kosciusko meter station, all located in Attala County, Mississippi. The Kosciusko line runs from Applicant's 22-inch North Main Line tap valves to the existing Kosciusko meter station. The regulator station is appurtenant to the Kosciusko line. Applicant states that it is presently using these facilities to make deliveries of gas to Mississippi Valley for resale in the area of the municipality of Kosciusko, Mississippi. It is further stated that the Kosciusko meter station is used for measurement and related operations involving the above deliveries to Mississippi.

Applicant states that it and Mississippi Valley have entered into an agreement dated June 6, 1979, providing for the sale of said facilities for the depreciated book value of \$16,900. It is stated that the agreement further provides that Applicant would construct a new meter station to measure the deliveries of gas to Mississippi Valley into the facilities to be sold to Mississippi Valley.

Therefore, Applicant proposed to construct, and operate a new meter station facility for gas deliveries to Mississippi Valley into the Kosciusko line which would be located at the

intersection of Applicant's 22-inch North Main Line and the Kosciusko line. Applicant states the cost of the proposed meter station is estimated to be \$37,042 which would be financed from short-term financing and cash on hand.

Applicant states that the abandonment proposed herein would enable it to operate its present resale facilities with greater flexibility and efficiency, and with greater reliability of service for its customers, and would eliminate the expense to Applicant of maintaining said facilities. Applicant further states the abandonment by sale and the construction proposed herein would not result in any termination of service to Mississippi Valley.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 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 157.70). 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 or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

<sup>1</sup> This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC.

<sup>2</sup> Prestonsburg has agreed to provide retail gas service to said 44 retail customers should the abandonment authorization in Docket No. CP79-485 be granted. It is stated in the petition.

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-36558 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. TC79-140]

**South Georgia Natural Gas Co. (Owens-Illinois, Inc.); Petition for Extraordinary Relief From Curtailment and Reclassification of Requirements**

November 19, 1979.

Take notice that on September 19, 1979, Owens-Illinois, Inc. (Petitioner) filed pursuant to section 1.7(b) of the Commission's Rules of Practice and Procedure and section 2.76(b) of the Commission's General Policy and Interpretations, a petition for extraordinary relief from operation of the curtailment plan of South Georgia Natural Gas Company (South Georgia), all as more fully set forth in the petition that is on file with the Commission and open to public inspection.

Petitioner states that its Valdosta paper mill is a direct industrial customer of South Georgia and that the mill's natural gas requirements of 11,073 Mcf per day are classified in curtailment priority 9 of South Georgia's index of requirements. Petitioner states that this classification is erroneous and asks that the requirements of the Valdosta mill be reclassified as follows:

priority 3: 285 Mcf per day (pilot lights)  
priority 7: 2,341 Mcf per day (lime kilns)  
priority 8: 8,447 Mcf per day (boilers)

Petitioner says that it uses gas in its Valdosta papermill to fire its boilers and lime kilns. It also uses gas in pilot lights, which are used for ignition and flame stabilization in the boilers and kilns. Petitioner says that it has attempted, without success, to convert to electric ignition.

Petitioner indicates that its natural gas requirements for its boilers, lime kilns, and pilot lights are requirements for different end uses that should be classified separately under South Georgia's plan. Moreover, petitioner says that priority 3 classification of its ignition fuel would be consistent with treatment recently accorded to Great Southern Paper Company, and that lime kilns should not be in the same category as boilers because lime kilns are a direct flame application.

Petitioner also avers that priority 3 classification of ignition fuel would assure safe operation of its chemical recovery boilers, that continued operation of the plant is critical to the local economy, and that granting the

extraordinary relief requested would be consistent with the policy of displacing fuel oil with natural gas.

Any person desiring to be heard or to make any protest with reference to said petition for extraordinary relief should on or before December 12, 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. 79-36570 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. SA80-20]

**South Georgia Natural Gas Co.; Request for Adjustment**

November 7, 1979.

Take notice that on October 31, 1979, South Georgia Natural Gas Company (South Georgia) filed in Docket No. SA80-20 an application pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 and § 1.41 of the Federal Energy Regulatory Commission's (the Commission) Rules of Practice and Procedure (18 CFR 1.41), requesting an order extending by one month, from December 1, 1979 through December 31, 1979 Section 15 of the General Terms and Conditions of South Georgia's FERC Gas Tariff, and for this purpose South Georgia has filed its Second Revised Sheet No. 34A, superseding First Revised Sheet No. 34A.

Section 281.204 of the Commission's Regulations requires interstate pipelines to file no later than October 31, 1979, tariff sheets containing a curtailment plan and incorporating therein an index of high-priority and essential agricultural use requirements of each of its customers. South Georgia states that on October 1, 1979, it made such a filing, which included a settlement plan for implementing said Section 281.204.

South Georgia states also that on October 1, 1979, it exercised its right to elect under Section 281.204(a)(2) of the Commission's Regulations to make its tariff sheets effective December 1, 1979,

and to keep Section 15 of the General Terms and Conditions of its current tariff in effect until December 1, 1979, thereby carrying forward until that date the Interim Curtailment Rule issued in Docket No. RM79-13.

In its October 31, 1979, filing South Georgia has filed its Second Revised Sheet No. 34A, superseding First Revised Sheet No. 34A to extend the effectiveness of the Interim Curtailment Rule through December 31, 1979, in order to provide sufficient time for the Commission to approve South Georgia's settlement curtailment plan. Accordingly, South Georgia has requested an adjustment of Commission rules and orders issued under the NGPA approving the filing of the aforesaid tariff sheet.

The procedures applicable to the conduct of this adjustment proceeding are found in Section 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 with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene in accordance with the provisions of Section 1.41 of the Commission's Rules of Practice and Procedure (18 CFR 1.41). All petitions to intervene must be filed by December 13, 1979.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-36557 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP78-221]

**Southwest Gas Corp.; Availability of Environmental Assessment for Proposed Liquefied Natural Gas (LNG) Peak-Shaving Plant in Pershing County, Nev.**

November 21, 1979.

Notice is hereby given in the above docket that on November 27, 1979, an environmental assessment (EA), prepared by the staff of the Federal Energy Regulatory Commission, was made available.

The EA addresses the application by Southwest Gas Corporation (Southwest) in Docket No. CP78-221 for a certificate of public convenience and necessity, requested pursuant to section 7(c) of the Natural Gas Act, to authorize the construction and operation of a liquefied natural gas peak-shaving facility to be located in Pershing County, Nevada, approximately 6 miles west of Lovelock. The proposed plant would consist of an LNG storage tank with a capacity of 1

billion cubic feet of natural gas (290,000 barrels of LNG) and process equipment with a liquefaction rate of 5 million cfd and a vaporization rate of 70 million cfd. The facility would liquefy and store gas during off-peak periods and revaporize it as needed to satisfy winter peak demands.

The EA concludes that the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment.

This EA has been circulated to Federal, state, and local agencies and all parties to the proceedings. It has been placed in the public files of the Commission and is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE, Washington, D.C. 20426. Copies are available in limited quantities from the Commission's Office of Public Information.

Any person who wishes to do so may file comments on the EA within 20 days. All comments must be filed on or before December 17, 1979.

For further information contact Mr. Lonnie Lister, (202) 357-8182.  
Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 79-36571 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP80-53]

**Tennessee Gas Pipeline Co. and Trunkline Gas Co.; Application**

November 19, 1979.

Take notice that on October 26, 1979, Tennessee Gas Pipeline Company, Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP80-53 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to exchange natural gas pursuant to a gas exchange agreement dated June 22, 1979. Pursuant to the agreement, Tennessee states that it agrees to receive up to 5,000 Mcf of gas daily from Trunkline at a proposed point of receipt on Tennessee's Main Line 100-1 near Mile Post 45-1 + 6.4 miles located in Jackson Parish, Louisiana, and to deliver such volumes to a point at the outlet of the presently existing measuring facilities where

Trunkline's Kaplan-Longville 30-inch pipeline crosses Tennessee's Kinder-Sabine 30-inch pipeline in Jefferson Davis Parish, Louisiana and/or other mutually agreeable existing points where gas can be delivered by Tennessee for the account of Trunkline.

Applicants state that initial volumes to be delivered by Trunkline to Tennessee would be purchased by Panhandle Eastern Pipe Line Company from Pan Eastern Exploration Company. Trunkline states that it expects to purchase gas in this field from Anadarko Production Company.

Applicants state there is no charge for the proposed exchange service. Applicants further state that they have sufficient capacity available to render the proposed exchange service without the need for any additional facilities, and their ability to perform presently authorized service to their customers would not be affected by this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 79-36572 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP63-177]

**Texas Eastern Transmission Corp. and Tennessee Gas Pipeline Co.; Petition to Amend**

November 20, 1979.

Take notice that on October 5, 1979, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77001, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP63-177 a petition to amend the Commission's order of March 18, 1963,<sup>1</sup> as amended February 7, 1974, July 18, 1975, and August 30, 1977, issued in the instant docket pursuant to Section 7 (c) of the Natural Gas Act so as to authorize an additional exchange point and the exchange of natural gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners stated that they are parties to an exchange agreement dated July 30, 1974, as amended October 17, 1974, which agreement provides for the exchange of natural gas on a gas-for-gas basis at various onshore points.

Petitioners seek authorization for an additional point of exchange provided by an amendment to the exchange agreement, dated July 10, 1979, at a mutually agreeable point on Tennessee's Louisiana Coastal Raccourci Line No. 5234-100 in LaFourche Parish, Louisiana.

According to Petitioners, Louisiana Land Exploration Company, pursuant to an agreement with Texas Eastern dated July 31, 1970, has dedicated gas supplies from a well to Texas Eastern. It is stated that such gas would be delivered to Tennessee for Texas Eastern's account through producer facilities, and redelivered to Texas Eastern at a mutually agreeable point under the existing exchange agreement.

Petitioners maintain they have ample capacity on their systems to render the service contemplated herein, and their obligations under the exchange agreement would have no significant effect on the operation of their systems. The additional exchange point, it is stated, would enable Petitioners to

<sup>1</sup>This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

receive additional gas supplies into their respective systems.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 13, 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. 79-36559 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP80-55]

#### Transcontinental Gas Pipe Line Corp.; Application

November 19, 1979.

Take notice that on October 29, 1979, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-55 an application to amend its certificates of public convenience and necessity issued pursuant to Section 7 of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) and listed below whereunder it transports natural gas for industrial users so as to authorize removal of end-use restrictions contained in such certificates, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that under end-use restrictions proposed by the Commission, a participating industrial transportation customer cannot utilize gas for low-priority uses even if its distributor-supplier is now in a position to deliver sufficient gas for such uses. Applicant further states that by Order No. 52 issued October 5, 1979, the Commission intended to eliminate the disadvantage faced by the industrial transportation customers vis-a-vis similarly situated industrial users who, by not having participated in the program, are free to consume gas for low-priority uses and who, in fact, are

being encouraged by government policies to do so at least for the short-term.

Applicant asserts that the reasons which gave rise to the industrial transportation program have now been eliminated or substantially mitigated. In that regard, it is stated, interstate pipelines now have parity of access to onshore supplies inasmuch as the Natural Gas Policy Act of 1978 (NGPA) has eliminated the price disparity which existed prior to the NGPA, and the general improvement in the interstate supply situation has substantially mitigated or eliminated the threat of curtailment to high-priority industrial uses.

Accordingly, Applicant seeks the elimination of end-use restrictions in its transportation authorizations, pursuant to Section 2.79(k) which provides, it is stated, that a pipeline may file a one-time blanket application to amend its Order No. 533 transportation certificates for that purpose. Applicant proposes that the end-use restrictions be eliminated for the duration of the "fuel shortage emergency period" which, pursuant to Order No. 30, terminates May 31, 1980. In substitution thereof, Applicant proposes that the limitations set forth in Section 2.79(m) would be applicable.

Applicant's industrial transportation authorizations sought to be amended by this application are as follows:

*Docket No. and Transportation Customer*  
CP76-46—Dan River, Inc.  
CP76-138—Cannon Mills Company  
CP76-181—Dan River, Inc.  
CP76-241—Nabisco, Inc.  
CP76-242—Cone Mills Corporation  
CP76-423—Champion Valley Farms, Inc., et al.  
CP76-501—Kohler Co.  
CP76-530—Phillip Morris Incorporated  
CP77-280—Kerr Finishing Division of Allied Products Corporation  
CP77-426—Owens-Corning Fiberglass Corporation  
CP77-542—Adventure Knits, Inc., et al.  
CP78-3—Pine Hall Brick & Pipe Company  
CP78-4—Guilford Mills, Inc.  
CP78-49—J.P. Stevens & Co., Inc.  
CP78-76—Owens-Corning Fiberglass Corporation  
CP78-324—Lithium Corporation of America  
CP78-350—Corning Glass Works  
CP78-351—Ball Corporation  
CP78-497—The Celotex Corporation

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 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. 79-36574 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP74-150]

#### Transcontinental Gas Pipeline Corp.; Petition to Amend

November 19, 1979.

Take notice that on October 22, 1979,<sup>1</sup> Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, Public Service Electric and Gas Company (Public Service), 80 Park Place, Newark, New Jersey 07101, Energy Development Corporation (EDC), 80 Park Place, Newark, New Jersey 07101, and The Kilroy Company (Kilroy), a partnership, Vinson & Elkins, 2100 First City National Bank Building, Houston, Texas 77002, filed in Docket No. CP74-150 a petition to amend the order issued June 13, 1974,<sup>2</sup> in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as (1) to authorize Kilroy to sell to Public Service at the maximum lawful price prescribed by the Natural Gas Policy Act of 1978 (NGPA) any gas found, developed, and produced by Kilroy from lands in the Colorado Delta Brazos Area Field (State Tract 533-S), offshore Matagorda County, Texas; and (2) to require Kilroy, in addition to EDC, to sell to Transco any gas owned or controlled by Kilroy in State Tract 533-S which is surplus to Public Service's market and storage requirements, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Transco states that because of curtailment by its suppliers and the need to obtain additional supplies for its customers, Public Service established a wholly-owned subsidiary, EDC, for the

<sup>1</sup>The application was initially tendered for filing on October 22, 1979; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 24, 1979; thus, filing was not completed until the latter date.

<sup>2</sup>This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

purpose of carrying on a program to explore for and develop additional reserves of natural gas. As a result of this effort, by contract dated February 22, 1974, Public Service and EDC agreed to purchase and sell gas produced from lands in the Colorado Delta Field, located in Texas waters offshore Matagorda County, Texas, it is asserted. It is further stated that Public Service entered into an agreement with Transco for the transportation, on an interruptible basis, of the gas to be purchased from EDC under the aforementioned contract. The Commission authorized this transportation service in Docket No. CP74-150 by order dated June 13, 1974. In ordering paragraph (C), the Commission requires EDC to sell to Transco any gas produced from the Colorado Delta Field which is surplus to Public Service's market and storage requirements. Ordering paragraph (E) restricts the price at which gas found and produced by EDC may be sold.

Petitioners state that EDC drilled one well on the aforementioned acreage and, not intending to drill any additional wells, assigned its interest in the remaining acreage of State Tract 533-S to Kilroy, effective May 1, 1979.

Petitioners further state that in an unrecorded letter agreement, referenced in the assignment and dated May 22, 1979, between Kilroy and Public Service, Kilroy agreed (1) to engage in a drilling program on Tract 533-S; (2) to sell to Public Service any gas found, produced, and developed from this acreage; and (3) that such gas would be sold subject to the contract between Public Service and EDC dated February 22, 1979, but that said contract would be amended in certain respects. It is stated further that Kilroy and Public Service intend to enter into a new contract with a term of fifteen years which provides that gas from Tract 533-S may be sold at the maximum lawful price under the NGPA, and that the point of delivery would be a mutually agreeable point on Seller's platform.

Petitioners request that ordering paragraph (E) of the June 13, 1974, order be deleted with respect to the transportation of gas from the acreage that has been acquired by Kilroy or, in the alternative, that said authorization be modified to add a provision that notwithstanding ordering paragraph (E), gas from Kilroy's interest in State Tract 533-S be sold pursuant to the terms of the proposed contract between Public Service and Kilroy at a rate equivalent to the applicable maximum lawful price under the NGPA. Petitioners urge that Kilroy must be able to collect the NGPA

rates in order to have sufficient incentive to engage in drilling and production.

Petitioners further request that the authorization be modified to add to ordering paragraph (C) a condition with respect to Kilroy similar to the condition in ordering paragraph (C) with respect to EDC.

Petitioners assert that Kilroy and Public Service would conform in all respects to the applicable provisions of the NGPA and would directly serve the public by developing and producing additional gas supplies to serve the interstate market.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 12, 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. 79-38573 Filed 11-26-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP77-554]

### Transcontinental Gas Pipeline Corp.; Petition To Amend

November 20, 1979.

Take notice that on October 16, 1979, Transcontinental Gas Pipeline Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-554 a petition to amend the Commission's order issued November 14, 1977, in the instant docket pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) so as to authorize the transportation of 600 Mcf of natural gas per day on an interruptible basis for Burlington Industries, Inc. (Burlington) for an additional two-year period commencing November 22, 1979, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is presently authorized to transport for Burlington, on an interruptible basis, up to 1,500 Mcf of natural gas per day which gas Burlington purchased through its participation in an oil and gas exploration and development joint venture operated by C&K Petroleum Company. Petitioner states that it receives the subject gas from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), at an existing interconnection between Tennessee and Petitioner near Crowley, Louisiana, or at other existing mutually agreeable points of interconnection.

Petitioner asserts it redelivers equivalent quantities (less quantities retained for compressor fuel and line loss makeup) at existing delivery points on its system to its following distribution customers:

Piedmont Natural Gas Company, Inc.  
(Piedmont)  
Public Service Company of North Carolina,  
Inc. (PSNC)  
North Carolina Natural Gas Corporation  
(NCNG)  
Virginia Pipe Line Company (Virginia)  
Carolina Pipeline Company (Carolina)  
Public Service Electric and Gas Company  
(PSE&G)

The Distribution Companies then deliver the subject gas to Burlington at the following facilities:

Greensboro Finishing (including Greensboro,  
N.C. Meadowview)  
Formed Fabrics, Greensboro, N.C.  
Burlington House Fabrics Finishing,  
Burlington, N.C.  
Wake Plant, Wake Forest, N.C.  
Durham Plant, Durham, N.C.  
Kernersville Finishing, Kernersville, N.C.  
Mayfair Plant, Burlington, N.C.  
Mooresville Finishing, Mooresville, N.C.  
William G. Lord Plant, Cramerton, N.C.  
Erwin Plant, Erwin, N.C.  
Sheffield Plant, Rocky Mount, N.C.  
Rocky Mount Plant, Rocky Mount, N.C.  
K.M. Altavista, Hurt, VA.  
Altavista Glass, Altavista, VA.  
Brookneal Plant, Brookneal, VA.  
Society Hill Plant, Society Hill, S.C.  
James Fabric, Cheraw, S.C.  
Westwood Industries, Paterson, N.J.

Petitioner proposes herein to continue the transportation service for Burlington.

Petitioner states it would charge Burlington 23.5 cents per dekatherm (dt) equivalent of gas for all quantities transported to Piedmont, PSNC, NCNG, Virginia and Carolina, and 24.0 cents per dt for all quantities transported to PSE&G hereunder.

Of the quantities received by Petitioner for transportation to Piedmont, PSNC, NCNG, Virginia and Carolina; it is stated that 3.8 percent shall be retained by Petitioner for compressor fuel and line loss make-up, and of the

quantities received by it for transportation to PSE&G, 4.4 percent shall be retained for said purposes.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 12, 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. 79-36560 Filed 11-26-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-42]

#### United Gas Pipe Line Co.; Application

November 19, 1979.

Take notice that on October 23, 1979, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP80-42 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of a new delivery point for the delivery of natural gas to Entex, Inc. (Entex) under an existing service agreement between Applicant and Entex, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to establish an additional point of delivery at an existing tap on its 30-inch North-South pipeline located in St. Martin Parish, Louisiana.

Applicant states that pursuant to an existing agreement between it and Entex, Applicant provides, through Entex, a maximum daily demand quantity (MDQ) of 3,800 Mcf for the St. Martinville, Louisiana Service Area which is comprised of several communities, rural and farm tap services, and the Parks, Louisiana, distribution system.

Applicant states that the Parks system presently is supplied through six miles of 2-inch pipeline extending from the St. Martinville City Gate No. 1. Applicant

asserts that by letter dated January 8, 1979, Entex informed Applicant of pressure problems experienced on the northern part of the 2-inch line during cold weather. It is stated that the proposed delivery point, to be known as City Gate No. 3, would shift a portion of the gas volume from City Gate No. 1 to City Gate No. 3, thereby alleviating such pressure problems.

Applicant states that Entex would install the necessary measuring and metering facilities, at no expense to Applicant. It is further stated that no increase in deliveries by Applicant to Entex would be required.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 12, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 79-36575 Filed 11-26-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-60]

#### United Gas Pipe Line Co.; Application

November 21, 1979.

Take notice that on November 1, 1979, United Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP80-60 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of a farm tap located near Tyler, Smith County, Texas, to enable Applicant, through the Entex, Inc. (Entex), to provide residential gas service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to install a farm tap on its existing 2½-inch tap line to enable Entex to supply the residence of Homer Hill, Jr. According to Applicant, this proposed installation would enable Applicant, through Entex, to provide residential gas service for the principal dwelling in satisfaction of a service commitment.

Applicant maintains that implementation of the farm tap service would not result in increased deliveries by Applicant to Entex.

Applicant states the estimated cost of the farm tap is \$518,000 which would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if

the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-36561 Filed 11-26-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-59]

**United Gas Pipe Line Co.; Application**

November 21, 1979.

Take notice that on October 31, 1979, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP80-59 an applicant pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the compression and delivery of natural gas for the account of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to compress and redeliver up to 35,000 Mcf of natural gas per day, less quantities for fuel and company-used gas, for the account of Tennessee under a gas compression agreement between Applicant and Tennessee dated October 11, 1979.

Applicant maintains that such compression is required before the subject gas, purchased by Tennessee from producers in the High Island Area, offshore Texas, can be delivered into the system of Tennessee at Vinton, Calcasieu Parish, Louisiana.

According to the Applicant, it would receive the subject gas for the account of Tennessee from Transcontinental Gas Pipe Line Corporation at Applicant's Vinton Compressor Station. Applicant proposes to compress the subject gas for the account of Tennessee at the Vinton Compression Station. Thereafter, Applicant would redeliver equivalent quantities to Tennessee at the flange which connects the existing measuring facilities of Tennessee and Applicant located on the discharge side of Applicant's Vinton Compressor Station. Applicant states that the receipt,

compression and redelivery points are located in Calcasieu Parish, Louisiana.

Tennessee would pay Applicant 1.5 cents per Mcf of the compression service, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-36562 Filed 11-26-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP70-164]

**Western Gas Interstate Co.; Petition To Amend**

November 20, 1979.

Take notice that on October 22, 1979,<sup>1</sup> Western Gas Interstate Company

<sup>1</sup>The application was initially tendered for filing on October 22, 1979; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 24, 1979; thus, filing was not completed until the latter date.

(Petitioner), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP70-164 a petition to amend the order issued pursuant to Section 7(c) of the Natural Gas Act on May 27, 1970,<sup>2</sup> in the instant docket so as to authorize (1) the construction and operation of facilities to be utilized at two new delivery points and (2) the exchange of gas at those delivery points under a gas purchase and sales agreement between Petitioner and Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on November 21, 1969, it and Panhandle entered into an agreement whereby average daily volumes of up to 5,000 Mcf of gas would be gathered, compressed, and delivered by Petitioner to Panhandle at a point of connection between their respective facilities in Beaver County Oklahoma (Western Delivery Point). Under the agreement, it is stated at least one-half of such volume would be sold to Panhandle, the remainder comprising exchange volumes to be redelivered to Petitioner at two points of delivery in Cimaron County, Oklahoma (Panhandle Delivery Points), such volumes then being sold to Southern Union Gas Company (Southern Union) for resale to Southern Union customers. The order issued May 27, 1970, authorized Petitioner and Panhandle to construct and operate facilities for the exchange and sale of natural gas as provided for in the agreement. The order was, it is stated, twice subsequently amended, once to authorize a change in the location of one of the Panhandle delivery points and once to authorize an additional Panhandle delivery point.

Petitioner states that by amendments dated February 7, 1979, and June 14, 1979, it and Panhandle have modified the agreement to provide for: (a) an additional Western delivery point located in Texas County, Oklahoma; and (b) an additional Panhandle delivery point located near Baker, Texas County, Oklahoma. It is stated that all of the volumes delivered by Petitioner to Panhandle at the new Western delivery point would be considered exchange volumes and would be redelivered to Petitioner at the Panhandle delivery points; none of such volumes would be sold to Panhandle under the agreement, it is asserted. Petitioner requests authorization to construct and operated the facilities needed at said new

<sup>2</sup>This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

delivery points and for the exchange of gas with Panhandle involving the new delivery points. Petitioner proposes to install a compressor and appurtenant piping that would increase the pressure of the gas to a pressure greater than that in Panhandle's pipeline. Petitioner states that the total estimated cost for the necessary facilities would be \$14,866 which would be financed from funds on hand.

Petitioner states further that the agreement also provides that the parties may establish additional delivery points. Petitioner requests authorization herein for the establishment of such new delivery points as may be required. Any necessary facilities would, it is asserted, be constructed either under budget authorization or, where appropriate, as non-jurisdictional gathering facilities.

Petitioner states that the authorization requested herein would enable it to accept additional volumes of gas from producers in the region of the new Western delivery point for eventual use in areas in which Petitioner is in need of additional supplies of gas for delivery to Southern Union.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 12, 1979, file with 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. 79-38578 Filed 11-28-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket Nos. G-4579, et al.]

### Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates <sup>1</sup>

November 21, 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.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to

<sup>1</sup>This notice does not provide for consolidation for hearing of the several matters covered herein.

intervene or protests 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 protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates 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.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft <sup>3</sup>	Pressure base
G-4579, D, Oct. 5, 1979	Cities Service Company, P.O. Box 300, Tulsa, Oklahoma 74102.	Lone Star Gas Company, Southwest Quarter of the Northwest Quarter of Sec. 35-2N-2W, Garvin County, Oklahoma.	(*)	.....
G-4579, D, Oct. 5, 1979	Cities Service Company	Lone Star Gas Company, Munday Walters Well #1 in SW/4 NW/4 Sec. 1-1N-2W, Garvin County, Oklahoma.	(*)	.....
G-4579, D, Oct. 9, 1979	Cities Service Company	Lone Star Gas Company, Munday Walters Well #1 in SW/4 NW/4 Sec. 1-1N-2W, Garvin County, Oklahoma.	(*)	.....
G-7642, D, July 19, 1979	Mobil Oil Corporation, Nina Greenway Plaza, Suite 2700, Houston, Texas 77046.	Northern Natural Gas Company, S/2 & NW/4 of Sec. 36-T33S-R37W, Stevens County, Kansas.	Release of gas for irrigation fuel...	.....
G-10139, D, Oct. 1, 1979	Cities Service Company	Tennessee Gas Pipeline Company, West Delta Area, Offshore Louisiana.	(*)	.....
G-13324, C, Oct. 24, 1979	Mobil Oil Corporation	Michigan Wisconsin Pipe Line Company, Certain acreage in the Laverne Field, Harper County, Oklahoma.	(*)	14.65
G-17047, D, Oct. 24, 1979	Mobil Oil Corporation	Michigan Wisconsin Pipe Line Company, Laverne Field, Beaver County, Oklahoma.	Gas Purchase Contract dated 11-658, as amended, terminated by its own terms on 3-16-79.	.....
C177-828, C, Oct. 4, 1979	Union Oil Company of California, Union Oil Center, Room 901, P.O. Box 7600, Los Angeles, Calif. 90051.	Texas Gas Transmission Corporation, Block A-596, South Addition, High Island Area, Offshore Texas.	(*)	14.65
C178-482, D, Oct. 1, 1979	Texaco Inc., P.O. Box 3109, Midland, Texas 79702.	Transcontinental Gas Pipe Line Corporation, Davidson Ranch Penn (7890) Field, Crockett County, Texas.	Expiration of nonproductive nonprospective leases.	.....
C179-108, C, Oct. 29, 1979	CNG Producing Company, 1800 Bank of New Orleans Bldg., 1010 Common Street, New Orleans, La. 70112.	Consolidated Gas Supply Corporation, Block 313, Vermilion Area "B" Platform, South Addition, Offshore Louisiana.	(*)	15.025
C179-114, A, Oct. 30, 1979	Shell Oil Company, Two Shell Plaza, P.O. Box 2099, Houston, Texas 77001.	Southern Natural Gas Company, Mississippi Canyon Block 311 Field, Offshore Louisiana.	(*)	15.025
C179-115, A, Oct. 26, 1979	Shell Oil Company	Florida Gas Transmission Company, Mississippi Canyon Block 311 Field, Offshore Louisiana.	(*)	15.025

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft <sup>3</sup>	Pressure base
C179-200, C, Oct. 29, 1979	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Columbia Gas Transmission Corporation, South Pass Blocks 93 and 94, Offshore, Louisiana.	(*)	15.025
C180-3, A, Oct. 3, 1979	Conoco Inc., P.O. Box 2197, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, Block 194 Field (Mississippi Canyon Area), Offshore Louisiana.	(11)	15.025
C180-4, A, Oct. 5, 1979	The Louisiana Land and Exploration Company, 225 Baronne Street, P.O. Box 60350, New Orleans, Louisiana 70160.	Transcontinental Gas Pipe Line Corporation, Certain acreage located in the Raceland Field, Lafourche Parish, Louisiana.	(12)	15.025
C180-6, A, Oct. 10, 1979	Sun Oil Company, P.O. Box 20, Dallas, Texas 75221.	Texas Eastern Transmission Corporation, Eugene Island Field, Block 258, Offshore Louisiana.	(12)	15.025
C180-8, A, Oct. 5, 1979	ARCO Oil and Gas Company, Division of Atlantic Richfield Company (Operator), P.O. Box 2819, Dallas, Texas 75221.	Northern Natural Gas Company, West Cameron Area Block 238 Field, Offshore Louisiana.	(11)	15.025
C180-7, E, Oct. 11, 1979	Gulf Oil Corporation (Succ. in Interest to Keweenaw Oil Company), P.O. Box 2100, Houston, Texas 77001.	United Gas Pipe Line Company, Certain acreage located in the South Mementau Field, Acadia Parish, Louisiana.	(12)	15.025
C180-9, E, Oct. 15, 1979	Gulf Oil Corporation (Succ. in Interest to Keweenaw Oil Company).	Panhandle Eastern Pipe Line Company, Certain acreage located in the Avard (Shell-Gardner Area) Field, Woods County, Oklahoma.	(14)	14.65
C180-10, E, Oct. 15, 1979	Gulf Oil Corporation (Succ. in Interest to Keweenaw Oil Company).	El Paso Natural Gas Company, Certain acreage located in the SLM Unit Field, Lea County, New Mexico.	(11)	14.65
C180-11, B, Oct. 12, 1979	Shell Oil Company, Two Shell Plaza, P.O. Box 2099, Houston, Texas.	Getty Oil Company, Tubb-Blinebry Field, Lea County, New Mexico.	(12)	14.65
C180-12, A, Oct. 17, 1979	Amoco Production Company, P.O. Box 50879, New Orleans, Louisiana 70150.	Texas Gas Transmission Corporation, High Island Block A-573, "B" Platform, Offshore Texas.	(12)	14.65
C180-13, A, Oct. 17, 1979	Amoco Production Company	Texas Gas Transmission Corporation, High Island Block A-572, "C" Platform in Block A-573 Field, Offshore Texas.	(12)	14.65
C180-14, A, Oct. 16, 1979	Amerada Hess Corporation, 1200 Milam, 6th Floor, Houston, Texas 77002.	United Gas Pipe Line Company, Block A-273, High Island Area, Offshore Texas.	(*)	14.65
C180-15, A, Oct. 16, 1979	Amerada Hess Corporation, 1200 Milam, 6th Floor, Houston, Texas 77002.	United Gas Pipe Line Company, Blocks A-474 and A-489, High Island Area, Offshore Texas.	(*)	14.65
C180-16, A, Oct. 18, 1979	Chevron U.S.A. Inc., P.O. Box 7643, San Francisco, Calif. 94120.	Texas Gas Transmission Corporation, Ship Shoal Block 296, Offshore Louisiana.	(*)	15.025
C180-17, B, Oct. 18, 1979	North Star Petroleum Corporation, 8626 Tesovo Drive, Suite 808, San Antonio, Texas 78217.	Phillips Petroleum Company, West Panhandle Red Cave Field, Hutchinson County, Texas.	Depleted to the extent that the continuance of service is unwarranted.	
C180-19, A, Oct. 22, 1979	Chevron U.S.A. Inc.	Natural Gas Pipeline Company of America, West Cameron Block 182 (NUG), Offshore Louisiana.	(*)	15.025
C180-20, A, Oct. 18, 1979	McCulloch Oil and Gas Corporation, 10880 Wilshire Blvd., Suite 1500, Los Angeles, Calif. 90024.	Southern Natural Gas Company, Felice Bayou Field, Plaquemine Parish, Louisiana.	(12)	15.025
C180-21, A, Oct. 22, 1979	Louisiana Land Offshore Exploration Company, Inc., 225 Baronne Street, P.O. Box 60350, New Orleans, La. 70160.	Texas Eastern Transmission Corporation, Certain acreage located in Block 353 Field, East Cameron Area, Offshore Louisiana.	(12)	15.025
C180-22, F, Oct. 22, 1979	Ladd Petroleum Corporation (Succ. to Indian Wells Oil Company), 830 Denver Club Building, Denver, Colorado 80202.	Northern Natural Gas Company, certain acreage in the Ozona SW Field, Crockett County, Texas.	(12)	14.73
C180-23, F, Oct. 22, 1979	Ladd Petroleum Corporation (Succ. to Indian Wells Oil Company).	Northern Natural Gas Company, certain acreage in the Ozona SW Field, Crockett County, Texas.	(14)	14.73
C180-24, F, Oct. 22, 1979	Ladd Petroleum Corporation (Succ. to Indian Wells Oil Company).	Northern Natural Gas Company, certain acreage in the Ozona SW Field, Crockett County, Texas.	(12)	14.73
C180-25, A, Oct. 23, 1979	Transwestern Gas Supply Company, P.O. Box 2521, Houston, Texas 77001.	Transwestern Pipeline Company, certain acreage located in the Beckham County, Oklahoma.	(*)	14.65
C180-26, A, Oct. 24, 1979	Mobil-GC Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Panhandle Eastern Pipe Line Company, certain acreage in the Well Draw Field, Converse County, Wyoming.	(12)	14.73
C180-27, A, Oct. 24, 1979	Mobil-GC Corporation	Northern Natural Gas Company, certain acreage in the Drinkard Field, Lea County, New Mexico.	(12)	14.73
C180-28, A, Oct. 24, 1979	Mobil-GC Corporation	Transcontinental Gas Pipe Line Corporation, certain acreage in the South Pelto Block 8 Field, Federal Offshore Louisiana.	(*)	14.73
C180-29, A, October 24, 1979	Mobil-GC Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Northern Natural Gas Company, Certain acreage in the Drinkard Field, Lea County, New Mexico.	(12)	14.73
C180-30, A, October 24, 1979	Mobil-GC Corporation	Sea Robin Pipeline Company, Certain acreage in the South Marsh Island Blocks 234 and 235 Field, Federal Offshore Louisiana.	(*)	14.73
C180-31, A, October 29, 1979	Texas Eastern Exploration Company, P.O. Box 2521, Houston, Texas 77001.	Texas Eastern Transmission Corporation, Block 352 (Block 353 Field), East Cameron South Addition Area, Offshore Louisiana.	(*)	15.025
C180-32, A, October 26, 1979	Transco Exploration Company, P.O. Box 1396, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, High Island Area, Block A-273 Field, Offshore Gulf of Mexico.	(*)	14.65
C180-34 (G-6937), B, October 26, 1979	Trey Oil Company, 744 Hickory Street, Abilene, Texas 79601.	El Paso Natural Gas Company, Noelke (Bouscaren "A" Lease), Crockett County, Texas.	Depleted, lease expired by virtue of nonproduction. State Regulatory Authority (Texas RRIC) ordered plugging of subject wells.	
C180-35, E, October 26, 1979	Gulf Oil Corporation (Succ. in Interest to Keweenaw Oil Company), P.O. Box 2100, Houston, Texas 77001.	United Gas Pipe Line Company, Lawrance Gas Unit located in the Willow Springs Field, Gregg County, Texas.	(11)	14.65
C180-36, B, October 29, 1979	Lightning Productions, Inc., et al., 2010 Republic Natl. Bank Bldg., Dallas, Texas 75201.	Texas Eastern Transmission Corporation, Canadian Bayou Field, DeSoto Parish, Louisiana.	Cessation of production due to depletion of gas reserves.	
C180-37, A, October 30, 1979	General American Oil Company of Texas, Meadows Building, Dallas, Texas 75206.	Transcontinental Gas Pipe Line Corporation, Mississippi Canyon Area, Block 194 Field, Offshore Louisiana.	(12)	15.025
C180-38 (C163-780), B, October 22, 1979	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	Texas Eastern Transmission Corporation, Warmeley Field 8200' Sand, Dewitt County, Texas.	(12)	
C180-39, A, October 31, 1979	Tenneco Exploration, Ltd., P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., "B" Platform from West Cameron Block 643, Offshore Louisiana.	(14)	15.025
C180-40, A, October 31, 1979	Tenneco Exploration, Ltd.	Columbia Gas Transmission Corporation, "B" Platform from East Cameron Blocks 370 and 371, Offshore Louisiana.	(*)	15.025

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft <sup>3</sup>	Pressure base
CI80-41, A, Nov. 1, 1979	Diamond Shamrock Corporation, P.O. Box 631, Amarillo, Texas 79173.	Southern Natural Gas Company, Blocks 114, 115 and 116, Main Pass Area, Offshore Louisiana.	( <sup>24</sup> )	15.025
CI80-42, A, Nov. 1, 1979	CNG Producing Company, Suite 1800, 1010 Common Street, New Orleans, La. 70112.	Michigan Wisconsin Pipe Line Company, Block 260, South Marsh Island Area, Offshore Louisiana.	( <sup>20</sup> )	14.70
CI80-43, A, Nov. 1, 1979	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, Rouseau Field, LaFourche Parish, Louisiana.	( <sup>27</sup> )	15.025
CI80-44, B, Nov. 5, 1979	Santa Fe Energy Company, P.O. Box 12058, Amarillo, Texas 79101.	Natural Gas Pipeline Company of America and Cities Service Oil Company, Crossroads Field, Lea County, New Mexico.	Ceased production and the well was plugged and abandoned.	
CI80-45, A, Nov. 5, 1979	Pennzoil Producing Company, P.O. Box 2967, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, High Island Block 273, East Addition, South Extension, Offshore Texas.	( <sup>20</sup> )	14.65
CI80-46, A, Nov. 2, 1979	Pogo Producing Company, c/o Pennzoil Company, P.O. Box 2967, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, High Island Block 273, East Addition, South Extension, Offshore Texas.	( <sup>20</sup> )	14.65
CI80-47, A, Nov. 7, 1979	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Northern Natural Gas Company, Gageby Creek Area, Wheeler and Hemphill Counties, Texas.	( <sup>24</sup> )	14.65
CI80-48 (CI63-428), B, Nov. 6, 1979.	Diamond Shamrock Corporation, P.O. Box 631, Amarillo, Texas 79173.	Natural Gas Pipeline Company of America, Allen "B" Unit, Camrick Southeast Gas Pool, Beaver County, Oklahoma.	Depleted to the extent that the continuance of service is unwarranted.	
CI80-49, A, Nov. 7, 1979	Mobil Oil Exploration & Producing Southeast, Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77048.	Trunkline Gas Company, South Timber Block 156, Federal Offshore Louisiana.	( <sup>24</sup> )	14.73
CI80-50, A, Nov. 7, 1979	Pennzoil Oil & Gas, Inc., c/o Pennzoil Company, P.O. Box 2967, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, High Island Block 273, East Addition, South Extension, Offshore Texas.	( <sup>20</sup> )	14.65
CI80-51, A, Nov. 7, 1979	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipe Line Company, Vermilion Block 242 Area, Offshore Louisiana.	( <sup>20</sup> )	15.025

<sup>1</sup> The Jackson-Vaughn Well was originally completed in the Hart Sandstone Formation, sometimes known as the Fourth Deese Formation. Sales under the Gas Sales Agreement were limited to said formation. The well was subsequently recompleted into the Third Deese Formation, and on 5-1-62, the Jackson-Vaughn Lease was unitized into the West Kate Third Deese Sand Unit. No deliveries have been made from the Hart Sandstone Formation since 5-1-62, and on 12-28-73, the Gas Sales Agreement expired of its own term.

<sup>2</sup> On 5-1-62, the Munday Walters Lease was unitized into the West Kate Third Deese Sand Unit. High-pressure gas deliveries had declined to such a level that the lease was disconnected from the purchaser's high-pressure pipeline system in May, 1962. No deliveries of high-pressure gas have been made from the Munday Walters since that time. On 4-5-79, Cities gave purchaser sixty days written notice of intent to terminate the Gas Sales Contract. Purchaser approved the termination.

<sup>3</sup> The Munday Walters Lease was unitized into the West Kate Third Deese Sand Unit, as Tract No. 33, on 5-1-62. In December, 1974, the lease was declared surplus to the Unit and was reacquired by the original owners. The Munday Walters Well was recompleted into the Layton Sand Formation. No deliveries of low-pressure gas have been made since January, 1975. On 5-3-79, Cities' gave purchaser sixty days written notice of intent to terminate the Gas Sales Contract. Purchaser, approved the termination.

<sup>4</sup> Leases or parts of leases which were committed to the subject contract were allowed to expire of their own terms or were released back to Lessor. Applicant no longer has an interest in those leases. Efforts were made to retain those properties; however, the demands of the State Mineral Board for additional drilling could not be justified.

<sup>5</sup> Applicant is filing under Rollover Gas Sales Contract dated 9-1-79.

<sup>6</sup> Applicant is filing under Section 104 of the Natural Gas Policy Act of 1978.

<sup>7</sup> Applicant is filing under Gas Sales Contract dated 10-3-78, amended by amendment dated 10-22-79.

<sup>8</sup> Applicant is amending previous Limited Term Certificate of Public Convenience and Necessity and is filing under Letter Agreement dated 9-27-78 and that certain Gas Sale and Purchase Contract dated 7-1-79.

<sup>9</sup> Applicant is amending previous Limited Term Certificate of Public Convenience and Necessity and is filing under Letter Agreement dated 9-27-78 and that certain Gas Sale and Purchase Contract dated 8-1-79.

<sup>10</sup> Applicant is willing to accept a permanent Certificate of Public Convenience and Necessity covering the subject sale conditioned in accordance with the NGPA of 1978 and the Commission's Regulations under said Act.

<sup>11</sup> Applicant is filing under Gas Purchase and Sales Agreement dated 9-17-79.

<sup>12</sup> Applicant is willing to accept a certificate conditioned upon a price equal to the maximum lawful price under the NGPA of 1978, recognizing its right to collect any higher rate to which it is entitled. Applicant also requests that this certificate be issued effective as of the day after the original contract expired of its own terms, i.e., 1-1-79.

<sup>13</sup> Applicant is filing under Gas Purchase Contract dated 10-3-79.

<sup>14</sup> Applicant is filing under Gas Purchase Contract dated 6-12-79.

<sup>15</sup> Effective as of 7-1-78, Applicant acquired all of Kewanee's interest in properties covered by contract dated 7-29-58, as amended.

<sup>16</sup> Effective as of 7-1-78, Applicant acquired all of Kewanee's interest in properties covered by contract dated 10-4-62, as amended.

<sup>17</sup> Effective as of 7-1-78, Applicant acquired all of Kewanee's interest in properties covered by contract dated 8-5-39, as amended.

<sup>18</sup> Wells have been reclassified from oil wells to gas wells by the New Mexico Conservation Commission. Therefore gas produced from such wells is automatically committed under Shell Oil Company/El Paso Natural Gas Company contract dated 1-1-52. (Shell FPC Gas Rate Schedule No. 41).

<sup>19</sup> Applicant is filing under Gas Purchase Contract dated 9-21-79.

<sup>20</sup> Applicant is willing to accept the applicable maximum lawful price as provided by the NGPA of 1978.

<sup>21</sup> Applicant is filing under Rollover Contract effective 12-1-78.

<sup>22</sup> Applicant is willing to accept a certificate conditioned upon a price equal to the maximum lawful price under Section 104 of the NGPA, reserving its right to collect any higher applicable NGPA rate.

<sup>23</sup> By an "Assignment, Bill of Sale and Conveyance" effective as of 8-22-79, Ladd acquired all of Indian Wells' interest in certain acreage covered by the residue gas purchase contract between Indian Wells and Northern, Dated 8-7-63, as amended. This acreage is described as the "Bean Lease" and Ladd proposes to continue the sale of residue natural gas from the Bean Lease in interstate commerce as of 8-22-79 pursuant to the residue gas purchase contract dated 8-7-63, as amended. Sales under that contract previously were made by Indian Wells pursuant to a small producer certificate issued in Docket No. CS73-0505.

<sup>24</sup> By an "Assignment, Bill of Sale and Conveyance" effective as of 8-22-79, Ladd acquired all of Indian Wells' interest in certain acreage covered by the residue gas purchase contract between Indian Wells and Northern, dated 9-11-64, as amended. This acreage is described as the "Henderson Lease". Ladd proposes to continue the sale of the residue natural gas from the Henderson Lease in interstate commerce as of 8-22-79, pursuant to the 9-11-64 contract, as amended. The sale of gas produced from such acreage was previously made by Indian Wells under small producer certificate issued in Docket No. CS73-0505.

<sup>25</sup> By an "Assignment, Bill of Sale and Conveyance" effective as of 8-22-79, Ladd acquired all of Indian Wells' interest in certain acreage covered by the residue gas purchase contract between Indian Wells and Northern, dated 1-25-72. This acreage is described as the "Millsbaugh Lease". Ladd proposed to continue the sale of residue natural gas from the Millsbaugh Lease in interstate commerce as of 8-22-79, pursuant to the 1-25-72 contract. The sale of gas produced from such acreage was previously made by Indian Wells under small producer certificate issued in Docket No. CS73-0505.

<sup>26</sup> Applicant is willing to accept temporary authorization conditioned to the applicable maximum lawful price, including any increases in such rate prescribed, allowed, or published by the Commission; provided that Applicant or the operator shall also be entitled to file applications with the appropriate jurisdictional agencies for increases to any higher contractually authorized prices allowed by the Regulations of the Commission under both the NGA and the NGPA.

<sup>27</sup> Applicant is willing to accept an initial rate determined in accordance with the NGPA of 1978, Part 271, Subpart D, Section 104 for gas sold from wells commenced on or after 1-1-75.

<sup>28</sup> Applicant is willing to accept an initial rate determined in accordance with the NGPA of 1978, Part 271, Subpart B, Section 102.

<sup>29</sup> Applicant is willing to accept an initial rate determined in accordance with the NGPA of 1978, Part 271, Subpart B, Section 102(d).

<sup>30</sup> Not used.

<sup>31</sup> Effective as of 7-1-78, Applicant acquired all of Kewanee's interest in properties covered by contract dated 6-1-72, as amended.

<sup>22</sup> Applicant is willing to accept a certificate conditioned to permit it to collect the applicable rate under the NGPA of 1978 subject to any rights (which are expressly reserved) which it may have to qualify for a higher contractually supported rate.

<sup>23</sup> The only well covered under the rate schedule has not produced commercial quantities of natural gas since 1955, has no recompletion possibilities, and is considered to be depleted.

<sup>24</sup> Applicant is filing under Gas Purchase and Sales Agreement dated 5-18-77.

<sup>25</sup> Applicant is filing under Gas Purchase and Sales Agreement dated 5-19-77.

<sup>26</sup> Applicant is filing under Gas Purchase Contract dated 9-25-79.

<sup>27</sup> Applicant is filing under Contract dated 8-11-77.

<sup>28</sup> Applicant is filing under Section 102 of the NGPA of 1978.

<sup>29</sup> Applicant is filing under Gas Purchase Contract dated 6-13-79.

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. 79-36548 Filed 11-25-79; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 1367-5]

### National Drinking Water Advisory Council; Open Meeting

Under Section 10(a)(2) of Pub. L. 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. §300f *et seq.*), will be held at 9:00 a.m. on December 13, 1979, and at 8:30 a.m. on December 14, 1979 in Room 3906, Mall Area, Waterside Mall, U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, D.C. 20460.

The purpose of the meeting is to discuss bottled water used for consumption and who insures its safety. In addition, other items to be discussed include EPA's new ground water protection initiative and reports on small water treatment systems including an update on EPA's Rural Water Survey.

Both days of the meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements are generally limited to 15 minutes followed by a 15 minute discussion period. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council in writing. The petition should include the general topic of the proposed statement, the petitioner's telephone number, and should be received by the Council before November 30, 1979.

Any person who wishes a file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at

the Council meeting and will be part of the permanent meeting record.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement should contact, Ms. Charlene Shaw, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The telephone number is: Area Code 202/426-8877.

Sweep T. Davis,

*Acting Assistant Administrator for Water and Waste Management.*

November 21, 1979.

[FR Doc. 79-36597 Filed 11-27-79; 8:45 am]

BILLING CODE 6560-01-M

## FEDERAL HOME LOAN BANK BOARD

[No. AC-68]

Home Federal Savings & Loan Association of Palm Beach, Palm Beach, Fla.; Final Action Post Approval Amendment of Conversion Application

November 19, 1979.

Notice is hereby given that on November 8, 1979, the Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation, by Bank Board Resolution No. 79-550, approved an amendment to the application of Home Federal Savings and Loan Association of Palm Beach, Palm Beach, Florida, for permission to convert to the Federal stock form of organization. The application to convert was approved on July 26, 1979, by Bank Board Resolution No. 79-393. Copies of the application and the amendment are available for inspection at the Secretariat of said Bank Board, 1700 G. Street, NW., Washington, D.C. 20552, and the Office of the Supervisory Agent of the Bank Board at the Federal Home Loan Bank of Atlanta, 260 Peachtree

Street, NW., Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn.

*Secretary.*

[FR Doc. 79-36580 Filed 11-27-79; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 10, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

**Agreement No.: T-2925-C**

Filing Party: Coless & Coertner, by Neal M. Mayer, Attorneys for Seatrain Intermodal Services Corp., 1000 Connecticut Ave., NW., Washington, D.C. 20036.

Summary: Seatrain Intermodal Services Corporation (Seatrain) is lessee of certain property owned by the Board of Commissioners of the Port of New Orleans (Board) known as the Dwyer Road Roll-on/Roll-off Wharf and Terminal, pursuant to Agreement No. FMC T-2925, as supplemented by Letter Agreement (FMC T-2925-1) which lease was entered into between Board and United Brands Company (United) and assigned by United to Panamericana Insurgentes (Bermuda) Limited (PIL) under FMC T-2925-A and again assigned by PIL to Seatrain on March 5, 1978, under FMC T-2925-B, Agreement No. T-2925-C, between Seatrain and Armasal Line (Armasal) is for the purpose of assigning the lease to Armasal to enable Seatrain to be relieved of economic obligations of the lease and for Armasal to obtain use of terminal property in the Port of New Orleans for its services. The Lease will expire on December 31, 1980, but may be renewed by lessee from year to year until December 31, 1983.

Dated: November 23, 1979.

By order of the Federal Maritime Commission.

Francis C. Hurney,  
Secretary.

[FR Doc. 79-36613 Filed 11-27-79; 8:45 am]  
BILLING CODE 6730-01-M

**[Docket No. 79-96]****Amstar Corp. v. Sea-Land Service, Inc.; Filing of Complaint**

Notice is given that a complaint filed by Amstar Corporation against Sea-Land Service, Inc. was served November 20, 1979. Complainant alleges that on a July 29, 1978 shipment of sugar, respondent seeks to assess a rate unreasonably high in violation of 46 U.S.C. 817(b)(5) (section 18(b)(5) of the Shipping Act, 1916).

Hearing in this matter, if any is held, shall commence on or before May 20, 1980. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,  
Secretary.

[FR Doc. 79-36611 Filed 11-27-79; 8:45 am]  
BILLING CODE 6730-01-M

**Jamaica Merchant Marine, Ltd., and Delta Steamship Lines, Inc.; Cancellation**

Filing Party: D. P. Kirby, Senior Vice President, Gulf Division, Delta Steamship Lines, Inc., 1700 International Trade Mart, New Orleans, Louisiana 70150.

Agreement No. 10218-1.  
Summary: On November 5, 1979, the Commission received notification of the cancellation and termination of Agreement 10218, a husbanding agreement between Jamaica Merchant Marine, Limited and Delta Steamship Lines, Inc. The termination is proposed to be effective three months from date of receipt of a letter dated October 26, 1979.

Dated: November 23, 1979.

By order of the Federal Maritime Commission.

Francis C. Hurney,  
Secretary.

[FR Doc. 79-36612 Filed 11-27-79; 8:45 am]  
BILLING CODE 6730-01-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 received by the appropriate Federal Reserve Bank not later than December 20, 1979.

**A. Federal Reserve Bank of Philadelphia, 100 North 6th Street, Philadelphia, Pennsylvania 19105:**  
New Jersey National Corporation, Trenton, New Jersey, (mortgage banking activities; New Jersey, Delaware, and Pennsylvania): to engage, through its subsidiary, Underwood Mortgage and Title Company, in making, acquiring, selling; and servicing, for its own account or the account of others, loans and other extensions of credit secured by real estate mortgages. These activities would be conducted from an office to be relocated from Turnersville, New Jersey to Voorhees Township, New Jersey, serving the aforementioned states (lending) and nationwide (servicing).

**B. Federal Reserve Bank of Atlanta, 104 Marietta Street, N.W., Atlanta, Georgia 30303:**

**Southwest Florida Banks, Inc., Fort Myers, Florida (Florida; trust activities)** to engage, through its subsidiary, The National Trust Company, in trust activities such as fiduciary, custody, agency and investment advisory services. These activities will be conducted from offices in Sarasota, Naples, and Fort Myers, Florida, serving Southwest Florida.

**C. Other Federal Reserve Banks:**  
None.

Board of Governors of the Federal Reserve System, November 20, 1979.

Theodore F. Allison,  
Secretary of the Board.

[FR Doc. 79-36637 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

**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 received by the appropriate Federal Reserve Bank not later than December 17, 1979.

*A. Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois 60690:*

Continental Illinois Corporation, Chicago, Illinois (leasing and direct lending activities; Texas): to engage, through its subsidiary, Continental Illinois Leasing Corporation, in leasing real and personal property on a full payout basis; acting as agent, broker or advisor in leasing of such property; making and acquiring for its own account and for the account of others, secured and unsecured loans and other extensions of credit to or for business, governmental and other customers (excluding direct consumer lending), entities or projects; purchasing or acquiring receivables or chattel paper (including, without limitation, consumer receivables and paper); issuing letters of credit and accepting drafts; and servicing such leases, loans and other extensions of credit. These activities will be conducted from an office located in Dallas, Texas, serving the State of Texas.

*B. Federal Reserve Bank of Dallas, 400 South Akard Street, Dallas, Texas 75222:*

Texas Commerce Bancshares, Inc., Houston, Texas (financing activities; Texas, New Mexico, Oklahoma, Arkansas, Louisiana): to engage, through its subsidiary, Texas Commerce Funding Company, in making or acquiring for its own account loans and other extensions of credit, including commercial and consumer loans, both secured and unsecured loans for the purpose of purchasing real property, securities, and commodities; and issuing letters of credit and acceptances. These activities would be conducted from an office in

Houston, Texas, serving Texas, New Mexico, Oklahoma, Arkansas and Louisiana.

*C. Federal Bank of San Francisco, 400 Sansome Street, San Francisco, California 94120:*

1. BankAmerica Corporation, San Francisco, California (finance, industrial loan and insurance activities; Tennessee): to engage through its subsidiary, FinanceAmerica Corporation, in operating an industrial loan company as authorized by Tennessee law including the making of 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 selling life, accident, disability and property insurance directly related to its extension of credit. With respect to the offering of credit related property insurance, such insurance will be limited to comprehensive physical damage insurance on motor vehicles, mobile homes and recreational vehicles pursuant to Tennessee Law. These activities would be conducted from an office in Knoxville, Tennessee, and would serve the state of Tennessee.

2. First Security Corporation, Salt Lake City, Utah (mortgage banking activities; Nevada): to engage through its subsidiary, Utah Mortgage Loan Corporation, in the origination and servicing of mortgage loans. These activities would be conducted from an office located in Reno, serving the State of Nevada.

3. Zions Utah Bancorporation, Salt Lake City, Utah (data processing activities; Colorado, Idaho, Oregon, and Utah): to engage, through its proposed subsidiary, Zions Data Service Company, in providing data processing services to its subsidiaries; and in providing financially related data processing services to the general public, including the sale of computer software services with microfilm and microfiche output options, and the sale of excess computer time. These activities would be conducted from an office in Salt Lake County, Utah, serving Colorado, Idaho, Oregon, and Utah.

*D. Other Federal Reserve Banks: None.*

Board of Governors of the Federal Reserve System, November 15, 1979.

William N. McDonough,

*Assistant Secretary of the Board.*

(FR Doc. 79- Filed 11-27-79; 8:45 am)

BILLING CODE 6210-01-M

### 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 received by the appropriate Federal Reserve Bank not later than December 17, 1979.

*A. Federal Reserve Bank of Boston, 30 Pearl Street, Boston, Massachusetts 02106:*

Industrial National Corporation, Providence, Rhode Island (mortgage banking activities; Illinois): to engage through its indirect subsidiary, Mortgage Associates, Inc., in the origination and sale of residential mortgages and the servicing of residential mortgage loans. These activities would be conducted from an office in Fairview Heights, Illinois, servicing Madison and St. Clair counties, Illinois.

*B. Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois 60690:*

Merchants National Corporation, Indianapolis, Indiana (leasing activities; Michigan): to continue to engage through its subsidiary, Circle Leasing of Michigan Corp., in the activities of

leasing, and acting as agent, broker, or adviser in leasing, personal property in accordance with the Board's Regulation Y. These activities will be conducted from an office in Grand Rapids, Michigan, serving the State of Michigan.

**C. Other Federal Reserve Banks:**  
None.

Board of Governors of the Federal Reserve System, November 16, 1979.

William N. McDonough,

*Assistant Secretary of the Board.*

[FR Doc. 79-36639 Filed 11-27-79; 8:45 am]

BILLING CODE 6210-01-M

### 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 received by the appropriate Federal Reserve Bank not later than December 17, 1979.

**A. Federal Reserve Bank of Chicago,**  
230 South LaSalle Street, Chicago,  
Illinois 60690:

Banks of Iowa, Inc., Cedar Rapids, Iowa (mortgage banking and insurance activities; Nebraska and Iowa): to

engage through a subsidiary, BI Mortgage Company, Inc., in making or acquiring real estate loans for its own account, servicing real estate loans and acting as insurance agent or broker with respect to credit life, accident and health insurance directly related to its extension of credit or for the account of subsidiary banks of the holding company. These activities would be conducted from an office in Lincoln, Nebraska, serving Nebraska and Iowa.

**B. Other Federal Reserve Banks:**  
None.

Board of Governors of the Federal Reserve System, November 15, 1979.

William N. McDonough,

*Assistant Secretary of the Board.*

[FR Doc. 79-36641 Filed 11-27-79; 8:45 am]

BILLING CODE 6210-01-M

### Citizens Capital Corp.; Formation of Bank Holding Company

Citizens Capital Corporation, Mount Olive, Mississippi, 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 per cent or more of the voting shares (less directors' qualifying shares) of Mount Olive Bank, Mount Olive, Mississippi. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 17, 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 16, 1979.

William M. McDonough,

*Assistant Secretary of the Board.*

[FR Doc. 79-36627 Filed 11-27-79; 8:45 am]

BILLING CODE 6210-01-M

### Citizens State Bancorporation; Formation of Bank Holding Company

Citizens State Bancorporation, Petersburg, North Dakota, 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 97 per cent of the voting shares of Citizens State Bank of Petersburg, Petersburg, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 21, 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 21, 1979.

Theodore E. Allison,

*Secretary of the Board.*

[FR Doc. 79-36631 Filed 11-27-79; 8:45 am]

BILLING CODE 6210-01-M

### County Bancshares, Inc.; Formation of Bank Holding Company

County Bancshares, Inc., Troy, Alabama, 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 90 per cent of the voting shares of Pike County Bank, Troy, Alabama. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 24, 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 23, 1979.

Theodore E. Allison,  
*Secretary of the Board.*

[FR Doc. 79-36830 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

### **D & B Holding Co., Inc., Formation of Bank Holding Company**

D & B Holding Company, Inc., Beulah, North Dakota, 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 95.3 per cent of the voting shares of Bank of Beulah, Beulah, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 20, 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 20, 1979

Theodore E. Allison,  
*Secretary of the Board.*

[FR Doc. 79-36829 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

### **Elizabethtown Bancshares, Inc.; Formation of Bank Holding Company**

Elizabethtown Bancshares, Inc., Elizabethtown, Kentucky, 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 80.1 per cent of the voting shares of Citizens Bank, Elizabethtown, Kentucky. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 13, 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 15, 1979.

William N. McDonough,  
*Assistant Secretary of the Board.*

[FR Doc. 79-30691 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

### **Fidelcor, Inc.; Proposed Retention of Latimer & Buck, Inc.**

Fidelcor, Inc., Rosemont, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(B)(2)), for permission to retain voting shares of Latimer & Buck, Inc., Philadelphia, Pennsylvania.

Applicant states that the proposed subsidiary would continue to engage in the activities of mortgage banking and acting as an investment or financial advisor, to the extent of: originating or acquiring, for the account of others, short-term or long-term extensions of credit, primarily on income producing properties, including, as an incident thereto, warehousing certain loans for which the ultimate investor has made a prior commitment; servicing extensions of credit and other financing transactions for any person; continuing to hold, for its own account, extensions of credit commonly associated with the financing of real estate; acting as an investment or financial adviser to the extent of providing portfolio investment advice relating to real property for any person; continuing to service certain real estate sale leaseback transactions which when made were intended to be the functional equivalent of extensions of credit; acting as insurance agent or broker with respect to certain life insurance policies on residential mortgages being serviced for an investor. These activities would be performed from an office of Applicant's subsidiary in Philadelphia, Pennsylvania, and the geographic areas served are primarily the states of Pennsylvania, New Jersey and Delaware. 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 § 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 Philadelphia.

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 17, 1979.

Board of Governors of the Federal Reserve System, November 16, 1979.

William N. McDonough,  
*Assistant Secretary of the Board.*

[FR Doc. 79-36635 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

### **First Atlanta Corp.; Proposed Expansion of Activity by First Financial Life Insurance Co.**

First Atlanta Corporation, Atlanta, Georgia, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(c)), for permission for its subsidiary, First Financial Life Insurance Company, Phoenix, Arizona, to expand geographically its activity.

Applicant states that the subsidiary would expand the activity of underwriting, as reinsurer, credit life and credit disability insurance in connection with extensions of credit by Applicant's subsidiaries. This activity would be performed from an office of Applicant's subsidiary in Phoenix, Arizona, and the geographic areas to be served are the states of Colorado and Florida. 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 § 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 21, 1979.

Board of Governors of the Federal Reserve System, November 21, 1979.

Theodore E. Allison,  
*Secretary of the Board.*

[FR Doc. 79-36834 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

#### **First Citizens Bancorp.; Formation of Bank Holding Company**

First Citizens Bancorp., Cleveland, Tennessee, 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 per cent or more of the voting shares of First Citizens Bank, Cleveland, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserves Bank, to be received not later than December 19, 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 19, 1979.

William N. McDonough,  
*Assistant Secretary of the Board.*

[FR Doc. 79-36828 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

#### **First National Charter Corp.; Acquisition of Bank**

First National Charter Corporation, Kansas City, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Farmers Savings Bank, Marshall, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should admit views in writing to the Reserve Bank to be received not later than December 24, 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 23, 1979.

Theodore E. Allison,  
*Secretary of the Board.*

[FR Doc. 79-36832 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

#### **Orbanco, Inc.; Proposed Retention of American Data Services, Inc.**

Orbanco, Inc., Portland, Oregon, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain voting shares of American Data Services, Inc., Portland, Oregon.

Applicant states that the proposed subsidiary would perform bookkeeping and data processing services. These activities would be performed from offices of Applicant's subsidiary in Portland, Oregon, and the geographic areas to be served are Oregon and Washington. 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 § 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 21, 1979.

Board of Governors of the Federal Reserve System, November 21, 1979.

Theodore E. Allison,  
*Secretary of the Board.*

[FR Doc. 79-36830 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

#### **Pittsburgh International Finance Corp.; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act**

Pittsburgh International Finance Corporation, Pittsburgh, Pennsylvania, a corporation organized under section 25 (a) of the Federal Reserve Act, has applied for the Board's approval under § 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a branch in New York, New York. Pittsburgh International Finance Corporation operates as a subsidiary of Pittsburgh National Bank, Pittsburgh, Pennsylvania. In connection with this application, Pittsburgh International Finance Corporation intends to change its name to Pittsburgh International Bank.

The factors that are to be considered in acting on this application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should

submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than December 14, 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, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 14, 1979.

William N. McDonough,  
Assistant Secretary of the Board.

[FR Doc. 79-36640 Filed 11-27-79; 8:45 am]  
BILLING CODE 6210-01-M

[Docket No. R-0261]

**Policy Statement Concerning Forward Placement or Delayed Delivery Contracts and Interest Rate Futures Contracts**

**AGENCY:** Board of Governors of the Federal System.

**ACTION:** Policy statement.

**SUMMARY:** This policy statement contains policies and procedures that the Board of Governors believes should be instituted by State member banks that engage in interest rate futures contracts,<sup>1</sup> forward contracts<sup>2</sup> or standby contracts,<sup>3</sup> on U.S. government and agency securities to insure that such activities are conducted in accordance with safe and sound banking practices. The policies and procedures will apply to outstanding contracts as well as those

<sup>1</sup>*Futures Contracts:* These are standardized contracts traded on organized exchanges to purchase or sell a specified security on a future date at a specified price. Futures contracts on GNMA mortgage backed securities and Treasury bills were the first interest rate futures contracts. Several other interest rate futures contracts have been developed, and it is anticipated that new and similar interest rate futures contracts will continue to be proposed and adopted for trading on various exchanges.

<sup>2</sup>*Forward Contracts:* These are over-the-counter contracts for forward placement or delayed delivery of securities in which one party agrees to purchase and another to sell a specified security at a specified price for future delivery. Contracts specifying settlement in excess of 30 days following trade date shall be deemed to be forward contracts. Forward contracts are not traded on organized exchanges, generally have not required margin payments, and can only be terminated by agreement of both parties to the transaction.

<sup>3</sup>*Standby Contracts:* These are optional delivery forward contracts on U.S. government and agency securities arranged between securities dealers and customers and do not currently involve trading on organized exchanges. The buyer of a standby contract (put option) acquires, upon paying a fee, the right to sell securities to the other party at a stated price at a future time. The seller of a standby (the issuer) receives the fee, and must stand ready to buy the securities at the other party's option.

entered into after January 1, 1980. Similar policy statements are being adopted by the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

**DATE:** The policy statement is effective January 1, 1980. Comments, however, will be received until December 15, 1979.

**FOR FURTHER INFORMATION CONTACT:** Robert S. Plotkin, Assistant Director, or Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452-2782), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**ADDRESS:** Comments should be addressed to Theodore E. Allison, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments should contain Docket No. R-0261.

**SUPPLEMENTARY INFORMATION:** This policy statement is issued pursuant to the Board's supervisory authority over State member banks contained in section 9 (12 U.S.C. § 321 *et seq.*) and section 11 (12 U.S.C. § 248) of the Federal Reserve Act and the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818 (b)) and related provisions of law.

**Statement of Policy Concerning Forward Contracts and Futures Contracts**

The following is a Board policy statement relating to State member bank participation in the futures and forward contract markets to purchase and sell U.S. government and agency securities. Information contained below is applicable specifically to commercial banking activities. An additional statement of policy applicable to trust department activities of State member banks may be issued at a later time.

The Staff of the Treasury Department and the Board of Governors of the Federal Reserve System recently completed a study of the markets for Treasury futures. In part, the study notes that there is evidence that financial futures can be used by banks effectively to hedge portions of their portfolios against interest rate risk. However, the study also cautions that improper use of interest rate futures contracts will increase interest rate risk—rather than decrease such risk. In addition, various participants have advised that certain salespersons are attempting to suggest inappropriate futures transactions for banks, such as taking futures positions to speculate on future interest rate movements. Furthermore, some banks and other financial institutions have recently issued standby contracts

(giving the contra party the option to deliver securities to the bank at a predetermined price) that were extremely large given their ability to absorb interest rate risk. In so doing, these institutions have been exposed to potentially large losses that could (and sometimes did) significantly affect their financial condition.

Banks that engage in futures, forward and standby contract activities should only do so in accordance with safe and sound banking practices with levels of activity reasonably related to the bank's business needs and capacity to fulfill its obligations under these contracts. In managing their investment portfolio, banks should evaluate the interest rate risk exposure resulting from their overall activities to insure that the positions they take in futures, forward and standby contract markets will reduce their risk exposure. Pairing a transaction in the spot market with an offsetting position in either futures, forward or standby contracts can be an effective way to reduce interest rate risk. However, policy objectives should be formulated in light of the bank's entire asset and liability mix. The following are minimal guidelines to be followed by banks authorized under State law to participate in these markets.

1. Prior to engaging in these transactions, a bank should obtain an opinion of counsel or its State banking authority concerning the legality of its activities under State law.

2. The board of directors should consider any plan to engage in these activities and should endorse specific written policies in authorizing these activities. Policy objectives must be specific enough to outline permissible contract strategies and their relationship to other banking activities, and record keeping systems must be sufficiently detailed to permit internal auditors and examiners to determine whether operating personnel have acted in accordance with authorized objectives. Bank personnel are expected to be able to describe and document in detail how the positions they have taken in futures, forward and standby contracts contribute to the attainment of the bank's stated objectives.

3. The board of directors should establish limitations applicable to futures, forward and standby contract positions and review periodically (at least monthly) contract positions to ascertain conformance with such limits.

4. The bank should maintain general ledger memorandum accounts or commitment registers to adequately identify and control all commitments to make or take delivery of securities. Such

registers and supporting journals should at a minimum include:

- (a) The type and amount of each contract,
- (b) The maturity date of each contract,
- (c) The current market price and cost of each contract, and
- (d) The amount of money held in margin accounts.

5. All open positions should be reviewed and market values determined at least monthly (or more often, depending on volume and magnitude of positions), regardless of whether the bank is required to deposit margin in connection with a given contract.<sup>4</sup> All futures contracts should be marked to market at least monthly. Any loss related to open forward and standby<sup>5</sup> contracts should be recognized on the basis of the lower of cost or market value of the underlying security as determined at month-end.<sup>6</sup> At the State member bank's option open forward contracts maintained in trading accounts may be carried at market.

6. Completed futures, forward or standby contracts giving rise to acquisition of securities will require such security transactions to be recorded on the basis of the lower of contract price or market price on settlement date. If the market value of the securities is lower than the contract price, the difference should be recorded as an immediate charge against income.

7. Fee income received by a bank in connection with a standby contract should be deferred at initiation of the contract and accounted for as follows:

- a. Upon expiration of an unexercised contract the deferred amount should be reported as income;
- b. Upon a negotiated settlement of the contract prior to maturity, the deferred amount should be accounted for as an adjustment to the expense of such settlement, and the net amount should be transferred to the income account; or
- c. Upon exercise of the contract, the deferred amount should be accounted for as an adjustment to the basis of the acquired securities. Such adjusted cost

<sup>4</sup>Underlying security commitments relating to open futures and forward contracts should not be reported on the balance sheet. Margin deposits and any unrealized losses (and in certain instances as noted below, unrealized gains) are usually the only entries to be recorded on the books. See "General Instructions" to the Reports of Condition and Income for additional details.

<sup>5</sup>Losses on standby contracts need be computed only in the case of the party committed to purchase under the contract, and only where the market value of the security is below the contract price adjusted for deferred fee income.

<sup>6</sup>Should margin on forward contracts be required, and assuming the margin accounts would work in the same manner as exchange margins, bank forward contracts should be carried at market to reflect the margin transactions.

basis should be compared to market value of securities acquired. See item 6.

8. Bank financial reports should disclose in an explanatory note any futures forward and standby contract activity that materially affect the bank's financial condition.

9. To insure that banks minimize credit risk associated with forward and standby contract activity, banks should implement a system for monitoring credit risk exposure associated with various customers and dealers with whom operating personnel are authorized to transact business.

10. Banks should establish other internal controls including periodic reports to management and internal audit programs to assure adherence to bank policy, and to prevent unauthorized trading and other abuses.

The issuance of long-term standby contracts, i.e., those for 150 days or more, which give the other party to the contract the option to deliver securities to the bank will ordinarily be viewed as an inappropriate practice. In almost all instances where standby contracts specified settlement in excess of 150 days, supervisory authorities have found that such contracts were related not to the investment or business needs of the institution, but primarily to the earning of fee income or to speculating on future interest rate movements. Accordingly, the Board concludes that State member banks should not issue standby contracts specifying delivery in excess of 150 days, unless special circumstances warrant.

The Board intends to monitor closely State member bank transactions in futures, forward and standby contracts to ensure that any such activity is conducted in accordance with safe and sound banking practices. In light of that continuing review, it may be found desirable to establish position limits applicable to State member banks. Supervisory action in individual cases under the Financial Institutions Supervisory Act (12 U.S.C. 1818 (b)) may also be instituted if necessary.

This policy statement will become effective January 1, 1980 and will apply to all outstanding contracts as well as those entered into by State member banks after January 1. The Board, however, will receive comments on this policy statement. Interested parties may submit comments and information on this statement in writing to Theodore E. Allison, Secretary of the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received by December 15, 1979. All material submitted should include the Docket Number R-0261. Such material will be made available for inspection

and copying upon request except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

By order of the Board of Governors of the Federal Reserve System, November 15, 1979.

Theodore E. Allison,  
Secretary of the Board.

[FR Doc. 79-36642 Filed 11-27-79; 8:45 am]

BILLING CODE 6210-01-M

### Sheldon Security Bancorporation, Inc.; Acquisition of Bank

Sheldon Security Bancorporation, Inc., Sheldon, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to retain 3.7 per cent of the voting shares of Security State Bank, Sheldon, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than December 20, 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 20, 1979.

Theodore E. Allison,  
Secretary of the Board.

[FR Doc. 79-36633 Filed 11-27-79; 8:45 am]

BILLING CODE 6210-01-M

### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

#### National Institute of Education

#### Program of Grants for Research on Organizational Processes in Education; Closing Dates for Receipt of Applications

Notice is given that applications are being accepted for grants in the Program of Grants for Research on Organizational Processes in Education according to the authority contained in Section 405 of the General Education Provisions Act, as amended (20 U.S.C. 1221e).

This announcement covers applications for new awards that are to be considered in Fiscal Year 1980.

Awards will be made for research on organizational processes in elementary and secondary schools and school districts.

This notice is a republication of December 1979 and April 1980 closing dates already announced in the Federal Register on March 29, 1979 (44 FR 18738), and in program announcements issued since then. The August 1980 deadline is being announced here for the first time.

A college, university, State or local educational agency, or other public or private non-profit or for-profit agency, organization, or group, or an individual is an eligible applicant. A grant to a for-profit organization is subject to any special conditions that the Director may prescribe.

**A. Application and Program**

**Information:** Persons who wish to receive the program announcement may request one by sending a self-addressed mailing label to the School Management and Organization Studies Team, EPO, Stop 16, National Institute of Education, Washington, D.C. 20208 (202-254-7930).

The program announcement includes the guidelines governing the program, information on the availability of funds, expected number of awards, eligibility and review criteria, and instructions on how to apply. All those who have previously requested that their names be placed on the mailing list for the program have been sent the current announcement and need not request it again.

This program will cover two types of grants: grants and small grants. Grants (other than small grants) are for projects in excess of \$10,000 or direct costs. A project supported by a grant under this program may be up to three years in duration. However, initial funding for grants will, in most cases, not exceed 12 months. Applications for grants that propose a multi-year project must be supported by an explanation of the need for multi-year support, an overview of the objectives and activities proposed, and the budget estimates necessary to attain the objectives in any years subsequent to the first year of the project.

A small grant is for a project for no longer than 12 months duration and for an amount that does not exceed \$10,000 plus indirect costs.

Applications for a grant (other than a small grant) are made in a two-stage process. An applicant for a major grant must first submit a preliminary proposal; following this, an applicant may submit a full proposal only after receipt of NIE comments on the preliminary proposal. The consideration of a preliminary proposal is intended to enhance the

acceptability of the full proposal and discourage submission of proposals having little chance of award. However, no applicant who has submitted a preliminary proposal will be denied the opportunity to present a full proposal.

Applications for a small grant do not require a preliminary proposal. All that is required is a single proposal.

**Closing Dates for Proposals of all Types**

December 17, 1979

April 14, 1980

August 18, 1980

**B. Estimated Distribution of Program**

**Funds:** Current estimates are that approximately \$600,000 will be available in FY 80 to fund projects under this program. However, only projects of the highest quality will be supported, whether or not the resources of the program are exhausted. Further, nothing in the program announcement should be construed as committing NIE to award any specific amount. Approximately 10-15% of the funds will be reserved for small grants. Based on past experience, NIE projects that 6-8 small grants will be awarded during the funding cycles which will be completed within the year. The total amount allocated to these grants will be increased or decreased by the Director of NIE, based on the merits of grant applications received.

**C. Applications Delivered by Mail:**

The use of certified mail, for which a receipt can be obtained, is strongly recommended for mailed application packages. The package should be securely wrapped and addressed as follows: Proposed Clearinghouse, Stop 1, National Institute of Education, 1200 19th Street, NW., Washington, D.C. 20208.

In the lower left hand corner of the package, include the words: Organizational Processes, and the type of proposal: Preliminary, Full, or Small. Applications will be accepted for review in a cycle only if they are mailed on or before the closing date for that cycle and the following proof of mailing is provided. Proof of mailing consists of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service.

**Note.**—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Each applicant whose application does not meet the deadline dates described above will be notified that the late application will not be considered

in the current review cycle but will be held over for consideration in the next one, or returned if the applicant prefers.

**D. Applications Delivered by Hand:**

An application that is hand-delivered must be taken to the Proposal Clearinghouse, National Institute of Education, Room 813, 1200 19th Street, NW., Washington, D.C. The Proposal Clearinghouse will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal Holidays.

**E. Applicable Regulations:** The regulations applicable to this program include the National Institute of Education General Provisions Regulations (45 CFR Part 1400-1424) published in the Federal Register on November 4, 1974, 39 FR 38992, and the Final Regulations for the Program of Grants for Research on Organizational Processes in Education (45 CFR Part 1480) published in the Federal Register on November 22, 1977, 42 FR 59841.

(Catalog of Federal Domestic Assistance Number 13.950, Educational Research and Development)

Date: November 19, 1979.

Michael Timpane,  
Acting Director, National Institute of Education.

[FR Doc. 79-36598 Filed 11-27-79; 8:45 am]

BILLING CODE 4110-39-M

**National Institutes of Health**

Heart, Lung, and Blood Research Review Committee A; Meeting

**Correction**

In FR Doc. 79-32852, appearing on page 61461, in the issue of Thursday, October 25, 1979, make the following correction.

On page 61461, in the first column, the phone number in the tenth line of the fourth paragraph of the document now reading "(301) 496-7363" should have read "(301) 496-7917".

BILLING CODE 1505-01-M

**Office of the Assistant Secretary for Health**

Regional Technical Assistance Workshops for Prospective Applicants to the Adolescent Pregnancy Prevention and Services Projects Grant Program

The Assistant Secretary for Health announces a series of two-day technical assistance workshops to be held during November and December, 1979 and January 1980.

**Purpose:** These workshops will provide technical assistance to prospective applicants for grants under Title VI of Pub. L. 95-626. During each workshop the participants will be presented with information and guidance on grant application criteria, eligibility requirements, use of grant funds, allowable project costs and program development criteria for appropriate comprehensive health, education, and social services to eligible adolescents. In addition, the workshops will provide interested persons an opportunity to receive in-depth consultation of the program legislation (Title VI, Pub. L. 95-626) and the Federal regulation published in the Federal Register on July 23, 1979 (44 FR page 43226).

Each workshop will be limited to the first fifty (50) individuals who submit the Office of Adolescent Pregnancy Programs registration form. Registration forms may be obtained from the address listed below. The Office of Adolescent Pregnancy Programs shall cancel any workshop if fewer than twenty (20) individuals have pre-registered one week prior to the designated date of the workshop and shall notify the pre-registrants of this cancellation.

**Dates:** The workshops will be held in the following selected cities on the dates designated:

\* Albany, New York, November 27-28, 1979  
Chicago Illinois, December 6-7, 1979  
Atlanta, Georgia, December 12-13, 1979  
San Francisco, California, December 19-20, 1979  
Denver, Colorado, January 10-11, 1980

For further information concerning specific locations and times for the workshops contact: Lulu Mae Nix, Ed. D., Director, Office of Adolescent Pregnancy Programs, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Room 725H, Washington, DC 20201, (202) 472-9093.

Dated: November 19, 1979.

Lulu Mae Nix,  
Director, Office of Adolescent Pregnancy Programs.

[FR Doc. 79-36538 Filed 11-27-79; 8:45 am]  
BILLING CODE 4110-85-M

\* The workshop to be held in Albany, New York has already reached the fifty-registrant limit. However, the Office of Adolescent Pregnancy Programs will accept requests for attendance to this workshop in the event there are cancellations.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[Serial No. I-16231]

#### Chevron Pipe Line Co.; Application

November 20, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185) the Chevron Pipe Line Company filed an application for a right-of-way to construct a cathodic protection unit on the following described Federal lands:

T. 2 S., R. 6 E., Boise Meridian, Idaho  
Sec. 33, NE¼ SW¼, NW¼ SE¼.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views on this matter should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 230 Collins Road, Boise, Idaho 83702.

Eugene E. Babin,

Acting Chief, Branch of L&M Operations.

[FR Doc. 79-36610 Filed 11-27-79; 8:45 am]

BILLING CODE 4310-84-M

#### Montana; Wilderness Inventory

November 20, 1979.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Wilderness Study Decision, Beartrap Canyon and Humbug Spire Instant Study Areas, Butte, Montana, BLM District.

**SUMMARY:** The Montana Bureau of Land Management (BLM) has completed an intensive inventory to determine if wilderness characteristics are present in the Beartrap Canyon and Humbug Spire Instant Study Areas. A proposed wilderness study decision was announced in the July 26, 1979, Federal Register and was followed by a thirty-day public comment period during the month of August 1979.

As a result of the comment period, 37 letters were received commenting on the wilderness characteristics of Beartrap Canyon. Thirty-four letters agreed that the area met the BLM wilderness characteristics criteria and favored additional wilderness study. Three letters were received which stated in general terms that the respondents were not in favor of further wilderness study for Beartrap Canyon.

Twenty-one letters were received relative to the Humbug Spire study proposal. Nineteen letters favored wilderness study and eventual wilderness designation. These letters ranged from general statements in favor of wilderness designation to comments on specific BLM wilderness characteristics criteria. Two respondents were not in favor of further wilderness study. One individual stated that the area should be protected for the benefit of the general public and that good access roads and improved camping facilities should be provided. One industry source commented that a portion of the Humbug Spire ISA contains good potential for major deposits of lead, zinc and silver and should therefore be retained for full multiple use.

**DECISION:** The Beartrap Canyon designated primitive area contains 2,861 acres and originally included 2,095 acres of contiguous BLM administered lands. All lands within the designated primitive area and 1,155 acres of the contiguous BLM lands were determined to have wilderness characteristics and were proposed to become a wilderness study area in the July 26, 1979, Federal Register proposed decision announcement. The remaining 940 acres of BLM contiguous lands determined not to contain wilderness characteristics are hereby dropped from further wilderness consideration. The wilderness study area affected by this decision contains 4,016 acres. This area is hereby designated a wilderness study area.

The Humbug Spire designated primitive areas contains 7,041 acres and originally contained 4,260 acres of contiguous BLM administered lands. The intensive inventory results concluded that all of the above mentioned lands contained wilderness characteristics with the exception of approximately 125 acres of BLM contiguous lands. The proposed wilderness study area decision announced in the July 26, 1979, Federal Register proposed that the 125 acres be dropped from wilderness study. This acreage is hereby dropped from further wilderness consideration. The 7,041 acres within the designated primitive area and the remaining 4,135 acres of BLM contiguous lands are hereby designated a wilderness study area. The combined acreage for this area totals 11,176 acres.

The Beartrap Canyon and Humbug Spire wilderness study areas as identified above will be further studied for potential inclusion in the National Wilderness Preservation System using the procedures outlined in the document entitled, *Procedures for Wilderness*.

*Review of Primitive and Natural Areas Formally Identified by the BLM Prior to November 1, 1975*, dated May 1979. An environmental impact statement and suitability report will be completed for each area and submitted to Congress by July 1, 1980.

This decision will become final on or before December 27, 1979, unless an amended decision is published as a result of new information received during the final 30-day protest period.

Maps and narrative information pertinent to this decision are available for public inspection at the following locations:

Bureau of Land Management, Montana State Office, 222 North 32nd Street, Billings, Montana 59101.

Butte BLM District Office, 106 N. Parkmont, Butte, Montana 59701.

Michael J. Penfold,  
State Director.

[FR Doc. 79-36605 Filed 11-27-79; 8:45 am]

BILLING CODE 4310-84-M

[W-40618]

### Wyoming; Application; Amendment

November 14, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Champlin Petroleum Company of Englewood, Colorado filed an application to amend their right-of-way grant W-40618 to authorize an existing 4½" fiberglass water pipeline previously constructed and authorized under the now contracted Brady Unit and to construct an additional 6¾" buried natural gas pipeline for the purpose of conducting oil and gas exploration and production operations across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 17 N., R. 100 W.,  
Secs. 16, 20 and 30.  
T. 16 N., R. 101 W.,  
Sec. 2.  
T. 17 N., R. 101 W.,  
Sec. 36.

Both pipelines located entirely within the existing 50' right-of-way width begin at a point located in the NE¼ of Section 9, T. 17 N., R. 100 W., and end at a point of connection with Champlin's compressor station site located in the NE¼NE¼ of Section 11, T. 16 N., R. 101 W., all within Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-36606 Filed 11-27-79; 8:45 am]

BILLING CODE 4310-84-M

### Bureau of Land Management

[U-910]

### Deep Creek Mountains Future Management Proposals, Utah; Clarification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

**SUMMARY:** This notice is to clarify the Federal Register notice of November 16, 1979 (page 66076) on the Deep Creek Mountains future management proposals. An area of approximately 68,910 acres is proposed for designation as a Wilderness Study Area (WSA). The WSA proposal is being reviewed in conjunction with the various withdrawal options and will go through the review process no matter which withdrawal option is decided upon, as the area contains the wilderness characteristics as described in the Wilderness Act of 1964. The various withdrawal options and the Wilderness Study Area proposal will be discussed at the December 5 meeting. The proposed WSA is depicted on the map published with the November 16 Federal Register notice.

It should also be noted that BLM is interested in the possibility of acquisition or exchange of State and private lands within and adjacent to the WSA proposal. If these lands were to become available consideration of those lands would be included in the WSA proposal, where appropriate.

Information packets which explain in greater detail the WSA proposal are being distributed by mail to those on the mailing list. These packets include maps and narrative summaries on wilderness characteristics. More detailed maps and inventory findings can be reviewed at the Richfield District office throughout the comment period.

Comments will be accepted until January 15, 1980 and should be sent to the BLM Richfield District office, 150 East 900 North, P.O. Box 768, Richfield, Utah 84701.

**FOR FURTHER INFORMATION CONTACT:** Herbert Hunt, BLM Richfield District office, 801-896-8221.

Dated: November 19, 1979.

Gary J. Wicks,  
State Director.

[FR Doc. 79-36543 Filed 11-27-79; 8:45 am]

BILLING CODE 4310-84-M

### New Mexico Wilderness Inventory; Star Lake-Bisti Coal Region Accelerated Intensive Wilderness Inventory Decision

November 15, 1979.

AGENCY: Bureau of Land Management, Interior.

ACTION: Decision and Notice.

**SUMMARY:** The New Mexico State Director of the Bureau of Land Management announces his decision on public lands within the Star Lake-Bisti Coal Region (Chaco Planning Unit) which contain wilderness characteristics as defined in Section 2(s) of the Wilderness Act of 1964. This decision will become final 30 days following the above publication date. This decision was reached after a systematic intensive inventory, with heavy public involvement, of the following wilderness intensive inventory units: Bisti, NM-010-57; Denazin, NM-010-04; Ah-she-sle-pah, NM-010-09; and Chaco Mesa, NM-010-03.

This inventory is directed by the Federal Land Policy and Management Act of 1976 and is being conducted using procedures identified in the Bureau of Land Management's Wilderness Inventory Handbook published September 27, 1978. Copies of this handbook are available from any office of the Bureau of Land Management.

This decision is based upon recommendations presented for public review and comment on August 5, 1979. Presentations of these recommendations was followed by a 90-day public comment period. During this public comment period, a public meeting was held in Albuquerque, New Mexico to explain the State Director's recommendations and accept public comment. All public inputs, written and oral, were accepted until November 5, 1979.

By the end of the comment period, the BLM received one thousand three hundred and thirty-three public inputs including oral testimony, letters, post cards and petitions. One thousand two hundred and seventy-seven inputs pertained directly to the intensive wilderness inventory recommendations, of which one thousand one hundred and seventy-four were preprinted form

letters or post cards. Two petitions were received which contained a total of eight hundred and fifty-five individual signatures. A number of individuals opposed wilderness study area status for the areas in question because of mineral, energy or economic conflicts.

Consideration of resource conflicts is not considered during inventory. However, these comments were displayed and saved for use in the "study" phase of the wilderness review program where all resource uses of the land are considered before making land use decisions.

Public inputs received were analyzed using a Content Analysis System. Results of this analysis are displayed in the Intensive Wilderness Inventory Analysis Report.

Information clarifying the State Director's decision and announcement is available upon request in map and written form. These documents and the Intensive Wilderness Inventory Analysis Report are available from the Bureau of Land Management's New Mexico State Office. These materials detail the following information:

**Decision—Units or Portions of Which Do Not Possess Wilderness Characteristics**

1. Chaco Mesa, NM-010-03, does not possess wilderness characteristics because of the existing impacts of man's work which have characterized the area as not natural.

2. The following portions of public land within the original boundaries of Ah-she-sle-pah, NM-010-09, do not contain either outstanding opportunities for solitude nor primitive and unconfined types of recreation because of their extensive inholdings, jeep trails and boundary configuration: T. 22 N., R. 11 W., NMPM, Sections 12 and W $\frac{1}{2}$ NE $\frac{1}{4}$  24.

3. The following portions of public land within the original boundaries of Denazin, NM-010-04, are sufficiently impacted by both Navajo occupancy and various other man made features as to be characterized as no longer natural: T. 25 N., R. 12 W., NMPM, Sections 21, 22, 23, 24, 25, 26, W $\frac{1}{2}$  27, 28, 33, 34, 35, 36; T. 25 N., R. 11 W., NMPM, Sections 19, 20, 29, 30, 31, 32, and all portions of public land which are north, northeast and east of an existing Texas-New Mexico pipeline company gas pipeline right-of-way (NM-032557) within Sections 34 and 35 and those portions of Section 26 and 27 contiguous to Sections 34 and 35.

As a result of this decision and unless otherwise amended, the above mentioned public land areas will be released from further wilderness considerations and the limitations imposed by Section 603 of the Federal Land Policy and Management Act of 1976 no longer will apply 30 days after publication of this document.

**Units or Portions of Which Possess Wilderness Characteristics**

1. Bisti, NM-010-54, 3,520 acres, possesses wilderness characteristics as defined in the Wilderness Act of 1964 and is designated a wilderness study area subject to the requirements of and management limitations imposed by Section 603 of the Federal Land Policy and Management Act.

2. Ah-she-sle-pah, NM-010-09, approximately 6,000 acres, excluding those public land areas identified in item 2 above, possesses wilderness characteristics as defined in the Wilderness Act of 1964 and is designated a wilderness study area subject to the requirements of and management limitations imposed by Section 603 of the Federal Land Policy and Management Act.

3. Denazin, NM-010-04, approximately 19,000 acres, excluding those public land areas identified in item 3 above, possesses wilderness characteristics as defined in the Wilderness Act of 1964 and is designated a wilderness study area subject to the requirements of and management limitations imposed by Section 603 of the Federal Land Management and Policy Act of 1976.

**ADDRESS:** Send requests to: State Director (930), Bureau of Land Management, United States Post Office and Federal Building, South Federal Place, P.O. Box 1449, Santa Fe, New Mexico 87501.

**FOR FURTHER INFORMATION CONTACT:** Dan Wood at the above Santa Fe, New Mexico address or call 505-988-627.

Arthur W. Zimmerman,  
State Director.

[FR Doc. 79-36542 Filed 11-27-79; 8:45 am]  
BILLING CODE 4310-84-M

[Nev-058218]

**Nevada; Land Reconveyed to United States**

November 16, 1979.

By quitclaim deed executed October 3, 1979, the Las Vegas Valley Water District reconveyed the following described land to the United States:

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,  
Sec. 1, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

T. 22 S., R. 61 E.,  
Sec. 6, Lots 142, 143, 145, 150, 153, 154, 157, 161, 163 and 164.

The purpose of this notice is to inform the public that the Bureau of Land Management has accepted title to the above-described land on behalf of the United States. The land regained public land status on November 7, 1979.

Wm. J. Malencik,  
Chief, Division of Technical Services.

[FR Doc. 79-36539 Filed 11-27-79; 8:45 am]  
BILLING CODE 4310-84-M

[N-2116]

**Nevada; Land Reconveyed to United States**

November 16, 1979.

By quitclaim deed executed September 4, 1979, Clark County reconveyed the following described land to the United States:

Mount Diablo Meridian, Nevada

T. 24 S., R. 58 E.,  
Sec. 26, NE $\frac{1}{4}$ NW $\frac{1}{4}$ .

The purpose of this notice is to inform the public that the Bureau of Land Management has accepted title to the above-described land on behalf of the United States. The land regained public land status on November 13, 1979.

Wm. J. Malencik,  
Chief, Division of Technical Services.

[FR Doc. 79-36540 Filed 11-27-79; 8:45 am]  
BILLING CODE 4310-84-M

[Nev-058572]

**Nevada; Land Reconveyed to United States**

November 16, 1979.

By quitclaim deed executed September 4, 1979, Clark County reconveyed the following described land to the United States:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,  
Sec. 31, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The purpose of this notice is to inform the public that the Bureau of Land Management has accepted title to the above-described land on behalf of the United States. The land regained public land status on November 13, 1979.

Wm. J. Malencik,  
Chief, Division of Technical Services.

[FR Doc. 79-36541 Filed 11-27-79; 8:45 am]  
BILLING CODE 4310-84-M

**Fish and Wildlife Service**

**Endangered Species Permit; Receipt of Application**

Applicant: Kansas City Zoological Gardens, Swope Park, Kansas City, Missouri 64132.

The applicant requests a permit to import 2 male and 2 female cheetahs (*Acinonyx jubatus*) from West Germany. The animals had previously been captured in Southwest Africa.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal

business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4925. Interested persons may comment on this application on or before December 20, 1979, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: November 28, 1979.

Donald G. Donahoo,  
Chief, Permit Branch, Federal Wildlife Permit  
Office, Fish and Wildlife Service.

[FR Doc. 79-36528 Filed 11-27-79; 8:45 am]

BILLING CODE 4310-55-M

#### Endangered Species Permit; Receipt of Application

Applicant: Department of Vertebrate Zoology, Natural History Museum, Smithsonian Institution, Washington, D.C. 20008.

The applicant requests an amendment to the current permit to include import of leatherback (*Dermochelys coriacea*) and Atlantic ridley (*Lepidochelys kempi*) sea turtle bones and keratin for an aging study. As with the current permit, all materials will be salvage and no turtles will be killed specifically for this project.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4749. Interested persons may comment on this application on or before December 28, 1979, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: November 21, 1979.

Donald G. Donahoo,  
Chief, Permit Branch, Federal Wildlife Permit  
Office, Fish and Wildlife Service.

[FR Doc. 79-36527 Filed 11-27-79; 8:45 am]

BILLING CODE 4310-55-M

#### INTERNATIONAL TRADE COMMISSION

[303-TA-11]

##### Nonrubber Footwear Components From India; Investigation and Hearing

Having received advice from the Department of the Treasury on October 24, 1979, that a bounty or grant is being paid with respect to certain nonrubber footwear components imported from India, entered under item 791.26 of the Tariff Schedules of the United States and accorded duty-free treatment under the Generalized System of Preferences, the U.S. International Trade Commission, on November 20, 1979, instituted investigation No. 303-TA-11 under section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (the countervailing duty law), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. Treasury defined the term "certain nonrubber footwear components" to mean leather cut or wholly or partly manufactured into forms or shapes suitable for conversion into footwear, other than patent leather and other than nonpatent leather uppers lasted or otherwise fabricated with midsoles or insoles.

*Conduct of the investigation under the Trade Agreements Act of 1979.* Under the countervailing duty law, the Commission is required to notify the Treasury Department of its determination in this investigation not later than 3 months after receiving Treasury's advice, in this case not later than January 24, 1980. However, the countervailing duty law has been amended in part and supplemented in part by sections 101-103 of the Trade Agreements Act of 1979 (Pub. L. 96-39, 93 Stat. 144, July 26, 1979). Section 101 of the act establishes a new title VII of the Tariff Act (sec. 701, et seq.; 19 U.S.C. 1671, et seq.) providing new (supplemental) countervailing duty provisions. Section 102 treats with investigations pending as of the effective date of the new title VII provisions (January 1, 1980, assuming that certain conditions set forth in secs. 2 and 107 of the Trade Agreements Act are fulfilled as of that date). Section 103 amends the present law (sec. 303 of the Tariff Act) in several specific respects to take into account new title VII of the Tariff Act.

Assuming that the new law becomes effective on January 1, 1980, the Commission will be required, under section 102 of the Trade Agreements

Act, to terminate this investigation, institute a new investigation under Subtitle A of title VII of the Tariff Act, and complete the new investigation within 75 days after January 1. On the assumption that the new law will become effective on January 1, 1980, the procedures described below will be followed in the present investigation.

*Hearing.* A public hearing in connection with the investigation will be held on Monday, February 4, 1980, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.), January 28, 1980. (If it appears that the new countervailing duty provisions will not become effective on January 1, 1980, a notice rescheduling the hearing (and related prehearing report and statements) for an earlier date will be issued.)

*Prehearing statements.* The Commission will prepare and place on the record by January 14, 1980, a staff report containing preliminary findings of fact. Parties to the investigation should submit to the Commission a prehearing statement not later than January 24, 1980. The content of such statement should include the following:

- (a) Exceptions, if any, to the preliminary findings of fact contained in the staff report;
- (b) Any additional or proposed alternative findings of fact;
- (c) Proposed conclusions of law;
- (d) Any other information and arguments which a party believes relevant to the Commission's determination in this investigation; and
- (e) A proposed determination for adoption by the Commission.

*Collection and confidentiality of information.* Requests for confidential treatment of information submitted to the Commission should be directed to the attention of the Secretary. Requests must conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Information submitted to or gathered by the Commission in conjunction with this proceeding under present section 303 of the Tariff Act will be subject to the new countervailing duty law provisions regarding access to information set forth in new title VII of the Tariff Act after January 1, 1980, if that law becomes effective. Those provisions relate to the collection and retention of information by the Commission and the maintenance of

confidentiality or the disclosure of information. The provisions of section 777 of title VII will require the following:

(a) A record of all ex parte meetings between interested parties or persons providing factual information in connection with an investigation and the Commissioners, their staffs, or any person charged with making a final recommendation in an investigation;

(b) Disclosure of nonconfidential information or nonconfidential summaries of confidential information which is not in a form that can be associated with or used to identify the operations of a particular person;

(c) Preventing disclosure of confidential information unless the party submitting the information consents to the disclosure; and

(d) Limited disclosure of certain confidential information under protective order or by an order of the U.S. Customs Court.

Section 516A of the Tariff Act, as amended by the Trade Agreements Act, will require all information in the record before the Commission in the title VII investigation, whether confidential or nonconfidential, to become part of the record before the Customs Court in any review of a Commission determination. Section 771 provides definitions applicable to title VII.

These procedures are set forth pursuant to section 335 of the Tariff Act, which authorizes the Commission to adopt such reasonable procedures as are necessary to carry out its functions and duties.

Issued: November 21, 1979.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 79-36663 Filed 11-27-79; 8:45 am]

BILLING CODE 7020-02-M

#### [AA1921-212]

#### Spun Acrylic Yarn From Japan; Investigation and Hearing

Having received advice from the Department of the Treasury on October 22, 1979, that spun acrylic yarn from Japan is being, or is likely to be, sold at less than fair value, the United States International Trade Commission, on November 19, 1979, instituted investigation No. AA1921-212 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For purposes of the

Treasury Department's determination, "spun acrylic yarn" means spun yarn of acrylic classified under item 310.50 of the Tariff Schedules of the United States.

*Conduct of the investigation under the Trade Agreements Act of 1979.* Under the Antidumping Act, 1921, the Commission is required to notify the Treasury Department of its determination in this investigation not later than January 22, 1980. However, under section 102 of the Trade Agreements Act of 1979 (P.L. 96-39, 93 Stat. 144, July 26, 1979), the Commission would be required to terminate this investigation on January 1, 1980, and initiate an investigation under subtitle B of title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979, if the conditions set forth in sections 2 and 107 of the Trade Agreements Act are fulfilled by January 1, 1980. In the event that the Trade Agreements Act becomes effective on January 1, 1980, this present investigation will be terminated and a new investigation will be instituted which will be conducted under the provisions of sections 101 and 102 of the Trade Agreements Act. That act requires this new investigation to be completed within 75 days after January 1, 1980. On the assumption that the new law will become effective, the procedures described below will be followed in the present investigation.

*Hearing.* A public hearing in connection with the investigation will be held on Tuesday, January 22, 1980, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than close of business (5:15 p.m., e.s.t.), Tuesday, January 15, 1980. (If it appears that the dumping provisions of the Trade Agreements Act will not be effective on January 1, 1980, a notice rescheduling the hearing (and related prehearing report and statements) for an earlier date will be issued.)

*Prehearing statements.* The Commission will prepare and place on the record by January 8, 1980, a staff report containing preliminary findings of fact. Parties to the investigation will submit to the Commission a prehearing statement by January 18, 1980. The content of such statement should include the following:

(a) Exceptions, if any, to the preliminary findings of fact contained in the staff report,

(b) Any additional or proposed alternative findings of fact,

(c) Proposed conclusions of law,

(d) Any other information and arguments which a party believes relevant to the Commission's determination in this investigation; and

(e) A proposed determination for adoption by the Commission.

*Collection and confidentiality of information.* Requests for confidential treatment of information submitted to the Commission should be directed to the attention of the Secretary. Requests must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Information submitted to or gathered by the Commission in conjunction with this proceeding under section 201(a) of the Antidumping Act will be placed in the record of the proceeding instituted under title VII of the Tariff Act of 1930, as added by the Trade Agreements Act, if and when that law becomes effective. That information will be subject to the new antidumping provisions regarding access to information set forth in title VII. Those provisions relate to the collection and retention of information by the Commission and the maintenance of confidentiality or the disclosure of information. The provisions of section 777 of title VII will require the following:

(a) A record of all ex parte meetings between interested parties or persons providing factual information in connection with an investigation and the Commissioners, their staffs, or any person charged with making a final recommendation in an investigation;

(b) Disclosure of nonconfidential information or nonconfidential summaries of confidential information which is not in a form that can be associated with or used to identify the operations of a particular person;

(c) Preventing disclosure of confidential information unless the party submitting the information consents to the disclosure; and

(d) Limited disclosure of certain confidential information under protective order or by an order of the U.S. Customs Court.

Section 516A of the Tariff Act of 1930, as amended by the Trade Agreements Act, will require that all information in the record before the Commission in the title VII investigation, whether confidential or nonconfidential in nature, become part of the record before the U.S. Customs Court in any action under section 516A regarding Commission determination. Section 771 provides definitions applicable to title VII.

The Commission is prescribing these procedures pursuant to section 335 of the Tariff Act of 1930, as amended (19 U.S.C. 1335), which authorizes the

Commission to adopt such reasonable procedures as are necessary to carry out its functions and duties.

Issued: November 21, 1979.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 79-36662 Filed 11-27-79; 8:45 am]  
BILLING CODE 7020-02-M

[AA1921-213]

### Sugar From Canada; Investigation and Hearing

Having received advice from the Department of the Treasury on November 5, 1979, that sugars and sirups from Canada are being, or are likely to be, sold at less than fair value, the U.S. International Trade Commission, on November 20, 1979, instituted investigation No. AA1921-213 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For purposes of the Treasury Department's determination, "sugars and sirups" means sugars and sirups classified under items 155.20 and 155.30 of the Tariff Schedules of the United States.

*Conduct of the investigation under the Trade Agreements Act of 1979.* Under the Antidumping Act, 1921, the Commission is required to notify the Treasury Department of its determination in this investigation not later than 3 months after receiving Treasury's advice, in this case not later than February 5, 1980. However, section 101 of the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 144, July 26, 1979), establishes a new title VII of the Tariff Act of 1930, subtitle B of which contains new antidumping duty provisions, and section 106 of the Trade Agreements Act provides for the repeal of the Antidumping Act, 1921. New title VII of the Tariff Act and repeal of the Antidumping Act will become effective January 1, 1980, if the conditions set forth in sections 2 and 107 of the Trade Agreements Act are fulfilled by January 1, 1980.

Assuming that the new law becomes effective on January 1, 1980, the Commission will be required, under section 102 of the Trade Agreements Act, to terminate this investigation, institute a new investigation under subtitle B of title VII of the Tariff Act, and complete the new investigation

within 75 days after January 1, 1980. On the assumption that the new law will become effective on January 1, 1980, the procedures described below will be followed in the present investigation.

*Hearing.* A public hearing in connection with the investigation will be held on Wednesday, February 13, 1980, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.), February 6, 1980. (If it appears that the antidumping duty provisions of the Trade Agreements Act will not become effective on January 1, 1980, a notice rescheduling the hearing (and related prehearing report and statements) for an earlier date will be issued.)

*Prehearing statements.* The Commission will prepare and place on the record by January 25, 1980, a staff report containing preliminary findings of fact. Parties to the investigation will submit to the Commission a prehearing statement not later than February 7, 1980. The content of such statement should include the following:

(a) Exceptions, if any, to the preliminary finds of fact contained in the staff report;

(b) Any additional or proposed alternative findings of fact;

(c) Proposed conclusions of law;

(d) Any other information and arguments which a party believes relevant to the Commission's determination in this investigation; and

(e) A proposed determination for adoption by the Commission.

*Collection and confidentiality of information.* Requests for confidential treatment of information submitted to the Commission should be directed to the attention of the Secretary. Requests must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Information submitted to or gathered by the Commission in conjunction with this proceeding under section 201(a) of the Antidumping Act will be subject to the new antidumping provisions regarding access to information set forth in new title VII of the Tariff Act after January 1, 1980, if that law becomes effective. Those provisions relate to the collection and retention of information by the Commission and the maintenance of confidentiality or the disclosure of information. The provisions of section 777 of title VII will require the following:

(a) A record of all *ex parte* meetings between interested parties or persons providing factual information in connection with an investigation and the Commissioners, their staffs, or any person charged with making a final recommendation in an investigation;

(b) Disclosure of nonconfidential information or nonconfidential summaries of confidential information which is not in a form that can be associated with or used to identify the operations of a particular person;

(c) Preventing disclosure of confidential information unless the party submitting the information consents to the disclosure; and

(d) Limited disclosure of certain confidential information under protective order or by an order of the U.S. Customs Court.

Section 516A of the Tariff Act, added by section 1001 of the Trade Agreements Act, will require that all information in the record before the Commission in the title VII investigation, whether confidential or nonconfidential, become part of the record before the U.S. Customs Court in any action under section 516A regarding the Commission's determination. Section 771 of the Tariff Act provides definitions applicable to title VII.

The Commission is prescribing these procedures pursuant to section 335 of the Tariff Act, which authorizes the Commission to adopt such reasonable procedures as are necessary to carry out its functions and duties.

Issued: November 21, 1979.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 79-36661 Filed 11-27-79; 8:45 am]  
BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

#### U.S. v. City of Danville, Va.; Proposed Consent Judgment in Action To Enjoin Discharge of Air Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States v. City of Danville, Virginia*, Civil Action No. 79-0071-D, has been lodged with the District Court for the Western District of Virginia. The proposed decree requires the defendant to meet the emission standards in the Virginia Implementation Plan. The decree also requires the defendant to pay a civil penalty of \$10,000 for its past violations.

The Department of Justice will receive written comments relating to the proposed judgment on or before December 28, 1979. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and refer to "United States v. City of Danville, Virginia," D.J. Ref. No. 90-5-2-1-47.

The proposed decree may be examined at the Office of the United States Attorney, United States Courthouse, Room 325, Poff Federal Building, 210 Franklin Road, Roanoke, Virginia; at the Region III Office of the Environmental Protection Agency, Enforcement Division, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106 and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2644, Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

James W. Moorman,  
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 79-36544 Filed 11-27-79; 8:45 am]  
BILLING CODE 4410-10-M

#### Law Enforcement Assistance Administration

#### Competitive Research Program on Methodological Issues in Criminal Justice Research and Evaluation; Solicitation

The National Institute of Law Enforcement and Criminal Justice (NILECJ) announces a competitive research program on methodological issues in criminal justice research and evaluation. A total of \$500,000 has been allocated to fund research that attempts to improve or increase the methods available to the criminal justice research and evaluation community. Multiple awards are envisioned under the Methodology Development Program with the suggested maximum request for funding not to exceed \$100,000. A peer review panel, consisting of experts in the field, will be employed to make recommendations for funding. The closing date for receipt of proposals is March 1, 1980.

Copies of the solicitation can be obtained by writing to:

Program Solicitation Office, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Harry M. Bratt,  
Acting Director, National Institute of Law Enforcement and Criminal Justice.

[FR Doc. 79-36604 Filed 11-27-79; 8:45 am]  
BILLING CODE 4410-18-M

#### Competitive Research Program of Research on Crime Control; Solicitation

The National Institute of Law Enforcement and Criminal Justice (NILECJ) announces a competitive research program of Research on Crime Control. A total of \$850,000 has been allocated to fund research on crime control effects associated with the exercise of the sanctioning power of the criminal justice system. A total of six to eight awards are anticipated from these funds. A peer review panel, consisting of experts in the field, will be employed to make recommendations for funding. The closing date for receipt of proposals is April 1, 1980.

Copies of the solicitation can be obtained by writing to:

Program Solicitation Office, National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850.

Harry M. Bratt,  
Acting Director, National Institute of Law Enforcement and Criminal Justice.

[FR Doc. 79-36609 Filed 11-27-79; 8:45 am]  
BILLING CODE 4410-01-M

#### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

##### Humanities Advisory Panel; Meeting

November 23, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 807, from 9 a.m. to 5:30 p.m. on Wednesday, December 19, 1979.

The purpose of the meeting is to review NEH Fellowship applications submitted to the National Endowment for the Humanities by faculty members at minority institutions.

Because the proposed meeting will disclose financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1979, I have

determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close this meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

If you desire more specific information, contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call 202-724-0367.

Stephen J. McCleary,  
Advisory Committee Management Officer.

[FR Doc. 79-36648 Filed 11-27-79; 8:45 am]  
BILLING CODE 7536-01-M

#### Humanities Advisory Panel; Cancellation

November 23, 1979.

This is to give notice that the meeting of the Humanities Panel scheduled to be held on December 6-7, 1979 at 806 15th Street NW., Washington, D.C., has been canceled. Announcement of this meeting appeared in the Federal Register on November 20, 1979; Vol. 44, page 66713, item No. 1. The purpose of the meeting was to review applications in the Research Materials Program for translations submitted to the National Endowment for the Humanities for projects beginning April 1, 1980.

Stephen J. McCleary,  
Advisory Committee Management Officer.

[FR Doc. 79-36647 Filed 11-27-79; 8:45 am]  
BILLING CODE 7536-01-M

#### NUCLEAR REGULATORY COMMISSION

##### Advisory Committee on Reactor Safeguards

##### Subcommittee on Power and Electrical Systems; Meeting

The ACRS Subcommittee on Power and Electrical Systems will hold an open meeting on December 13, 1979 in room 1046, 1717 H St., N.W., Washington, DC 20555 to discuss several miscellaneous items with regard to electrical power, instrumentation, control, and protection systems in nuclear power plants. Notice of this meeting was published November 21, 1979.

In accordance with the procedures outlined in the Federal Register on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its

consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

**Thursday, December 13, 1979, 8:30 a.m.  
Until the Conclusion of Business**

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Gary Quittschreiber, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: November 21, 1979.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 79-36435 Filed 11-27-79; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 10946; 812-4438]

### **Boston Mutual Life Insurance Co. and Boston Mutual Life Variable Annuity Account A; Filing of Application**

November 20, 1979.

In the matter of Boston Mutual Life Insurance Company and Boston Mutual Life Variable Annuity Account A, 120 Royal Street, Canton, MA 02021. (812-4438).

Notice is hereby given that Boston Mutual Life Insurance Company (the "Company"), a mutual life insurance company established under the laws of the Commonwealth of Massachusetts, a Boston Mutual Life Variable Account A (the "Variable Account"), a separate account of the Company registered under the Investment Company Act of 1940 ("Act") as a unit investment trust

(collectively "Applicants"), filed an application on February 26, 1979, and amendments thereto on July 18, 1979 and September 28, 1979 pursuant to Section 11 of the Act for an order approving certain offers of exchange, and pursuant to Section 6(c) of the Act, for an order exempting from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d), and Rule 22c-1 of the Act, to the extent necessary, a proposed plan whereby Applicants desire to make available to the public Individual Flexible Purchase Payment Variable Annuity Contracts (the "Contracts") which provide for a contingent deferred sales charge ("Contingent Charge") to be imposed against the owner's contract value, in the event of certain surrenders. All interested persons are referred to the Application and amendments thereto on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Variable Account, a separate account of the Company, was organized as a unit investment trust pursuant to a custodian agreement between the Company, a sponsor-depositor, and The State Street Bank and Trust Company ("State Street"), as custodian, and registered under the Act. The Variable Account was established for the purpose of funding the Contracts issued by the Company. In lieu of the customary initial sales charge on the gross purchase payments under the Contracts, Applicants propose to assess a Contingent Charge. Under the proposed Contracts a purchaser may make purchase payments in such amounts and at such frequency as the purchased desires. There are no requirements imposed except for minimum amounts of the initial purchase payments (\$1,000 for non-tax qualified contracts and 300 on an annualized basis for the first contract year for contracts funding tax-qualified pension or profit/sharing plans). Subsequent purchase payments may not be less than \$25. The purchaser may allocate all or a portion of each purchase payment among one or more of the six acceptable mutual funds which comprise the underlying investments of the Variable Account. Applicants have made the specific undertaking that no additional mutual funds will be added to the list of acceptable mutual funds without the prior approval of the Commission. The contracts provide for the accumulation of such purchase payments with accrued earnings, until the annuity commencement date, selected by the purchaser, at which time annuity payments begin as designated by the contract owner.

Under the proposed Contracts the contract owner may, at any time prior to the annuity commencement date, withdraw some or all of the accumulated contract value. However, applicants would assess a Contingent Charge, which would be applied in the case of certain withdrawals by a contract owner from the contract value. The Contingent Charge will equal 5% of the lesser of: (1) All purchase payments received during the eight contract years immediately prior to the valuation period during which the surrender is requested; or (2) the amount surrendered. The cumulative sum of all such charges, per contract owner, will never exceed 5% of that owner's purchase payments received during the eight contract years immediately prior to the valuation period during which the surrender is requested. After the second contract anniversary, a contract owner may, not more frequently than once annually on a non-cumulative basis make a partial surrender of up to 6% of purchase payments per contract year free from the Contingent Charge.

When a redemption is requested to effect a cash withdrawal prior to the annuity commencement date, State Street would surrender to the depositor cash equal to the amount of the cash withdrawal requested by the contract owner, plus the applicable Contingent Charge. The requested cash withdrawal would be remitted to the contract owner. The Contingent Charge would be paid by State Street to the Company to reimburse it for the expenses incurred in connection with the sale of the Contracts. These expenses include commissions, promotional costs, sales administration and similar sales related expenses.

Although the Company asserts that it has primary responsibility for all administration of the contracts and the Variable account, such administrative services are purchased by the Company from State Street, pursuant to an administrative contract which expires, unless renewed, on April 30, 1981.

The Applicants maintain that the administrative services provided by State Street include issuance of the Contracts, maintenance of contract owner's records and all accounting, valuation, regulatory and reporting services. The Company makes a Contract Administrative Charge for such services which is deducted from the contract value on each contract anniversary. At the present time the Contract Administrative Charge is \$30 per contract year on a pro rata basis, if necessary. At the expiration of the current administrative contract, State

Street is no longer obligated to provide administrative services nor is the Company obligated to retain State Street for performance of such services. If, for any reason, State Street does not continue to provide administrative services, the Company asserts that it will attempt to secure similar services from such sources as may then be available. Such services will be purchased on a basis which, in the Company's sole discretion, is best able to perform such services in a satisfactory manner even though the costs for such services may be higher than would prevail elsewhere. If the Company cannot secure such services on a basis which it deems satisfactory, it may elect to perform all or any part of such services itself or through a subsidiary or affiliate. In the event a contract is surrendered on other than a contract anniversary, this charge will be deducted from any surrender values paid. The Contract Administrative Charge is not guaranteed and may change over the years the contract is in force.

Applicants state that the variable annuity contracts offered by the Applicants are unlike traditional variable annuity contracts in that there is no expense guarantee. Applicants agree that if the requested exemptions are granted, the exemptive order shall remain in effect only so long as there is no increase in the expense charges made in connection with the contracts.

In addition to the annual Contract Administrative Charge, a Mortality Risk Premium would be assessed. The Applicants submit that although variable annuity payments made to annuitants would vary in accordance with the investment performance of the investments of the Variable Account, they would not be affected by the mortality experience of persons receiving such payments or the general population. The Company would assume this mortality risk by virtue of annuity rates incorporated in the Contracts which cannot be changed. In addition, in the event of the death of a designated annuitant, the Company would pay a death benefit equal to the contract value and will not deduct the Contingent Charge.

The Company submits that to compensate it for assuming the above mortality risks, it would deduct an amount computed on a daily basis, which would be equal on an annual basis to 1.75% of the daily net asset value of the Variable Account. If this amount is insufficient to cover the actual costs, the loss will be borne by the Company; conversely, if the amount

deducted proves more than sufficient, the excess will be profit to the Company. The Company states that it expects a profit from this premium charge.

*Section 2(a)(35).* Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants assert that the proposed Contingent Charge is consistent with the intent of the definition of "sales load" contained in the Act. While eliminating the traditional sales load deduction from purchase payments, for reimbursement of sales expenses, the Company will continue to incur expenses related to the sale of the Contracts, including commissions paid to sales personnel and the costs of promotion and sales administration. The Contingent Charge, therefore, would be retained by the Company to reimburse it solely for expenses related to the sale of the Contracts, which Applicants maintain is within the Section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants assert that the deferral of the sales charge, and making it contingent upon the occurrence of an event which might not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicants have requested an exemption from the provisions of Section 2(a)(35), to the extent necessary to permit the proposed transactions.

*Sections 27(c)(2), 26(a)(2) and 26(a)(2)(C).* Section 27(c)(2), of the Act, in pertinent part, makes it unlawful to sell any periodic payment plan certificate unless the proceeds of all payments on such certificates are deposited with a custodian having the qualifications described in Section 26(a)(1), and are held by such custodian under an agreement containing substantially the provisions required in Sections 26(a)(2) and (3) of the Act. Section 26(a)(2)(C) provides essentially that no payment to the depositor of, or a principal underwriter for, a registered unit investment trust shall be allowed the trustee or the custodian as an expense except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing

bookkeeping and other administrative duties normally performed by the custodian. Applicants have requested an exemption from the provisions of Section 27(c)(2) and 26(a)(2)(C), to the extent necessary to implement the proposed transactions.

Applicants have consented that the foregoing requested exemption may be made subject to the following conditions: (1) That the deductions under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe and the Commission may reserve jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of the Variable Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets, other than the charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

*Section 2(a)(32) and 27(d).* Section 2(a)(32) of the Act, in pertinent part, defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain initial sales charges. Applicants submit that the imposition of the Contingent Charge does not violate Section 2(a)(32) of Section 27(d). Applicants assert that Sections 2(a)(32) and 27(d) both contemplate the assessment of an initial sales load. However, Applicants assert that, with a Contingent Charge, the net amount invested is the gross purchase payments. Thus, the owner's proportionate share or account value would be the gross purchase payments, plus or minus any increase or decrease in value, less the Contingent Charge. Applicants assert that deferring the imposition of the sales charge in no way restricts the contract owner from receiving his proportionate share or the value of his account on redemption. Rather, Applicants maintain that the

Contingent Charge will merely be deducted at the time of redemption in determining that proportionate share, instead of being deducted from purchase payments. Applicants contend that the Contingent Charge merely defers the timing of the imposition of the sales charge and makes the charge contingent upon an event which might never occur. Applicants submit that this method of assessing sales charges permits the purchaser's net amount invested to be increased, thus providing a benefit to the purchaser. However, Applicants have requested an exemption from the provisions of Section 2(a)(32) and 27(d), to the extent necessary, to implement the proposed transactions.

*Section 27(c)(1).* Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell any such certificate unless such certificate is a redeemable security. Applicants submit that the assessment of a Contingent Charge upon certain redemptions, which is fully disclosed in the prospectus, should not be construed as such a restriction on redemption. Applicants assert that the Contracts are still redeemable securities, whether the sales charge is imposed against the purchase payment at the time of purchase, or whether such charge is deferred and made contingent upon an occurrence at a later instant during the contract period. Applicants assert that this is particularly true where the deferral of the Contingent Charge until a redemption is effected has the general effect of increasing the contract value that is available for redemption were the sales charge deducted from the purchase payment before investment on behalf of the owner. However, Applicants have requested an exemption from the provisions of Section 27(c)(1), to the extent necessary, to implement the proposed transactions.

*Section 22(c) and Rule 22c-1.* Rule 22c-1, promulgated under Section 22(c) of the Act, in pertinent part prohibits a registered investment company issuing a redeemable security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. Applicants submit that implementation of the Contingent Charge is in no way violative of Section 22(c) or Rule 22c-1 promulgated thereunder. When a redemption is requested to effect a cash withdrawal, the price on redemption will be based on the current net asset value. The Contingent Charge will merely be deducted at the time of

redemption in arriving at the contract owner's proportionate share or account value. However, Applicants have requested an exemption from the provisions of Section 22(c) and Rule 22c-1, thereunder, to the extent necessary to implement the proposed transaction.

*Section 11.* Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have been first submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of the exchange of the securities of registered unit investment trusts for the securities of any other investment company. Applicants propose to permit contract owners to elect to have shares of the six acceptable mutual funds which underly the Contracts to be exchanged for one another from time to time. Applicants assert that the proposed exchange of shares among registered investment companies does not violate the requirements of Section 11(c). However, to avoid any questions that might be raised as to the applicability of Section 11(c), Applicants are requesting an Order pursuant to Section 11, to the extent necessary to permit the proposed offer of transfer rights described above.

*Section 6(c).* Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 17, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the

Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following December 17, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 79-36672 Filed 11-27-79; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 21302; 70-6152]

#### Cedar Coal Co., et al.; Proposed Mining Equipment Lease

November 21, 1979.

In the matter of Cedar Coal Company, Southern Appalachian Coal Company, Central Appalachian Coal Company, 301 Virginia Street East, Charleston, West Virginia 25327; Central Ohio Coal Company, 301 Cleveland Avenue, S.W., Canton Ohio 44702 and Southern Ohio Coal Company, Post Office Box K, Moundsville, West Virginia 26041 (70-6152).

Notice is hereby given that Cedar Coal Company ("Cedar"), Central Appalachian Coal Company ("CACO") and Southern Appalachian Coal Company, coal mining subsidiaries of Appalachian Power Company ("Appalachian"), and Central Ohio Coal Company and Southern Ohio Coal Company, coal mining subsidiaries of Ohio Power Company, which, like Appalachian, is an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, have filed with this Commission a post-effective amendment to their application previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9 and 12 of the Act

as applicable to the proposed transaction. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated August 8, 1979 (HCAR No. 21178), applicants (excluding CACO) were authorized to enter into leasing arrangements with The Commonwealth Plan, Inc. ("Commonwealth"), under separate master leasing agreements ("Commonwealth Leases") pursuant to which Commonwealth is committed to lease to applicants (excluding CACO), on or before March 31, 1980, certain mining equipment having a total aggregate acquisition cost not to exceed \$20,000,000. Under the Commonwealth Leases rents are payable quarterly and provide for the full amortization of the acquisition cost of each unit of equipment over a period of either 12, 20, 28 or 40 quarters. The quarterly rental payments per \$1,000 of acquisition cost are \$97.369 over a 12-quarter term, \$64.026 over a 20-quarter term, \$49.962 over a 28-quarter term and \$39.702 over a 40-quarter term. Such quarterly payments contain an implicit interest rate to the lessor (assuming no residuals) of 9.92% per annum (on a 360-day year basis). When the cost of an item is fully amortized the quarterly rental payment becomes an amount equal to 0.125% of its acquisition cost. The Commonwealth Leases are net leases, with all expenses directly related to the leased equipment borne by the lessee.

By post-effective amendment it is requested that Cedar be permitted to enter into a rider to its lease with Commonwealth, which rider would provide for the lease to Cedar (as part of the \$20,000,000 of equipment to be leased to applicants (excluding CACO)), at a total acquisition cost of approximately \$2,250,000, of a heavy duty electric yard shovel ("Shovel"). The rider provides for the lease of the Shovel at a quarterly rental of \$28.867 per \$1,000 of acquisition cost over an 80-quarter term. Such quarterly payment contains the same implicit interest rate to lessor (9.92%, assuming no residuals and a 360-day year) as the other rental terms under the Commonwealth Leases.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person, may, not later than December 19, 1979, request in writing

that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 79-36673 Filed 11-27-79; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 16354; SR-DTC-79-5]

#### Depository Trust Co.; Order Approving Rule Change

November 20, 1979.

In the matter of the Depository Trust Company ("DTC"), 55 Water Street, New York, New York 10041 (SR-DTC-79-5).

On October 19, 1979, the Depository Trust Company submitted a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act") establishing an interface with the Philadelphia Depository Trust Company. The submission comprises procedures and agreements for the operation of the interface. In its filing, DTC also requested that the Commission determine that the agreements, provisions and safeguards established by DTC for the interface are adequate for the protection of investors pursuant

to paragraphs (g) of Rules 8c-1 and 15c2-1 under the Act.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, the rule change was published in the Federal Register (44 FR 64058, October 19, 1979), and the public was invited to submit comments. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 16275, October 12, 1979. No letters of comment were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-DTC-79-5 be approved.

The Commission also finds that the agreements, provisions and safeguards established by DTC for the interface are adequate for the protection of investors pursuant to paragraphs (g) of Rules 8c-1 and 15c2-1 under the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 79-36670 filed 11-27-79; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 10949; 812-4550]

#### Eaton & Howard Cash Management Fund; Filing of Application for an Order of Exemption

November 21, 1979.

In the matter of Eaton & Howard Cash Management Fund, 24 Federal Street, Boston, Massachusetts, 02110 (812-4550).

Notice is hereby given that Eaton & Howard Cash Management Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 10, 1979, and an amendment thereto on November 16, 1979, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to calculate its net asset value per share using the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations

contained therein, which are summarized below.

Applicant states that it is a "money market" fund organized as a Massachusetts Business Trust. Applicant further states that it is designed as an investment vehicle for temporary cash reserves and that its shares are currently offered for sale to individuals, institutions and fiduciaries. According to the application, Applicant's investment objective is to provide maximum current income and preservation of capital through investments in short-term liquid securities. Applicant states that its assets consist entirely of cash items and investments having a stated maturity date of not more than one year from the date of purchase, and that the average maturity of all money market instruments in its portfolio (on a dollar weighted basis) is maintained at 120 days or less. Applicant states that it presently values all of its portfolio instruments in accordance with the views expressed by the Commission in Investment Company Act Release No. 9786 (May 31, 1977) ("Release").

According to the application, Applicant's net asset value per share on October 19, 1979 was \$9.96. Applicant desires to offer its shares to the public at a constant net asset value of \$1.00 per share. According to representations contained in the application, Applicant, at the time the requested exemptive order is issued, will (1) reduce the net asset value per share to \$1.00 through the issuance of additional shares to shareholders, using the then net asset value per share, and (2) use the market value of those securities which are then being valued at market as the basis for the application of the amortized cost valuation method.

Section 2(a)(41) of the Act defines, in pertinent part, value to mean: (i) with respect to securities for which market quotations are readily available, the market value of such securities, and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors.

Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at

current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view in the Release that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Section 6(c) of the Act provides, in part, that the Commission, upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant represents that its Trustees have determined that, absent unusual circumstances, amortized cost represents fair value of money market instruments. Applicant states that many investors seek an investment vehicle which offers a constant net asset value and relatively steady investment income, and that utilizing amortized cost is likely to enable Applicant to maintain a constant net asset value of \$1.00 per share under usual or ordinary circumstances. According to the application, if Applicant were not permitted to follow a policy reasonably calculated to maintain a constant net asset value per share, investors would invest in competing investment companies which seek to maintain a constant net asset value per share rather than in Applicant's shares. Applicant also asserts that, under an amortized cost

valuation method, its shareholders would have the convenience of being able to determine the value of their share holdings simply by knowing the number of shares they own.

Applicant agrees that the following conditions may be imposed in any order of the Commission granting the exemptions it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Trustees undertake—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at \$1.00 per share.

2. Included with the procedures to be adopted by the Trustees shall be the following:

(a) Review by the Trustees as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the \$1.00 amortized cost price per share, and maintenance of records of such review.

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds one half of one percent, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Trustees believe the extent of any deviation from Applicant's \$1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of

greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, Applicant undertakes that if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its assets in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than December 17, 1979, at 5:30 P.M., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at

the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 79-36676 Filed 11-27-79; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 21303; 70-4538]

**Michigan Power Co. and American Electric Power Co., Inc.; Proposed Extension of Time for Open-Account Advances by Holding Company**

November 21, 1979.

In the matter of Michigan Power Company, P.O. Box 367, Three Rivers, Michigan, 49093, and American Electric Power Company, Inc., 2 Broadway, New York, New York, 10004 (70-4538).

Notice is hereby given that American Electric Power Company, Inc. ("AEP"), a registered holding company, and its electric utility subsidiary Michigan Power Company ("MPC"), have filed with this Commission a post-effective amendment to their declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By orders dated October 10, 1967, May 2, 1968, May 26, 1969, December 16, 1969, October 28, 1970, December 21, 1971, March 23, 1972, November 29, 1972, December 27, 1973, December 4, 1974, December 16, 1975, December 23, 1976, December 31, 1977, and December 29, 1978 (HCAR Nos. 15872, 16051, 16383, 16559, 16880, 17405, 17508, 17783, 18232, 18686, 19297, 19820, 20281 and 20858), this Commission, among other things,

authorized AEP to make open-account advances to MPC of up to \$12,000,000 outstanding at any one time. Such advances are to be repaid on or before December 31, 1979.

By post-effective amendment declarants request an extension of time until the earlier of December 31, 1980, or 45 days after any order by the Commission authorizing MPC's issuance of term notes in File No. 70-6374, to make said open account advances and to repay such advances. It is stated that MPC has pending before this Commission (in File No. 70-6374) an application concerning its proposed issuance and sale to two banks of up to \$20,000,000 of notes having a maturity of December 31, 1987.

A part of the proceeds from the sale of such notes would be used to repay the open-account advances to AEP. Declarants presently anticipate that the Michigan Public Service Commission, which has jurisdiction over the issuance of such notes, may require a hearing with respect to their issuance, resulting in a possible delay in their issuance and sale until after December 31, 1979.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 19, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended by said post-effective amendment or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a

hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary

[FR Doc. 79-36675 Filed 11-27-79; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 21300, 70-5936]

**Middle South Utilities, Inc., and Arkansas-Missouri Power Co.; Third Post-Effective Amendment Regarding Issuance and Sale of Short-Term Notes by Subsidiary Company and Acquisition Thereof by Holding Company**

November 16, 1979.

In the matter of Middle South Utilities, Inc., 225 Baronne Street, New Orleans, Louisiana, 70112 and Arkansas-Missouri Power Company, 405 West Park Street, Blytheville, Arkansas, 72315 (70-5936).

Notice is hereby given that Arkansas-Missouri Power Company ("Ark-Mo"), a subsidiary company of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Middle South have filed with this Commission a third post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(b), 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated December 28, 1976, December 29, 1977, and December 20, 1978 (HCAR Nos. 19826, 20349, and 20841), Ark-Mo was authorized to issue and sell to Middle South from time to time through December 31, 1979, and Middle South was authorized to acquire, up to \$2,100,000 of Ark-Mo's unsecured short-term promissory notes of a maturity of not more than twelve months. Presently, \$2,100,000 of such notes are outstanding, with a maturity of December 31, 1979.

Ark-Mo proposes to extend such \$2,100,000 of short-term borrowings for one year. The proposed notes will be in the form of unsecured promissory notes payable not more than twelve months from the date of issuance (and in any event maturing not later than December 31, 1980) and will bear interest at a rate

per annum equivalent to 110% of the commercial loan rate in effect at Manufacturers Hanover Trust Company from time to time. The notes will, at the option of Ark-Mo, be prepayable in whole or in part at any time without premium or penalty. The net proceeds to be received by Ark-Mo from the issuance and sale of the notes proposed will be applied to the payment at maturity of Ark-Mo's currently outstanding borrowings from Middle South. It is stated that Ark-Mo presently intends to repay the notes from the proceeds of permanent financing or from funds otherwise available to Ark-Mo from its operations.

It is stated that the Arkansas Public Service Commission has jurisdiction over the issuance and sale of the notes and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses expected to be incurred in connection with the proposed transactions are estimated at \$4,000.

Notice is further given that any interested person may, not later than December 14, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 79-36668 Filed 11-27-79; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 16360; File No. SR-NYSE-77-14]

**Order Approving Certain Proposed Rule Changes by the New York Stock Exchange, Inc.**

November 21, 1979.

In the matter of New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005 (File No. SR-NYSE-77-14).

On April 18, 1977, the New York Stock Exchange, Inc. (the "NYSE") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, proposed rule changes to amend its Constitution, rules and policies. Those proposed rule changes are contained in File No. SR-NYSE-77-14 and generally relate to the formation and approval of member organizations. The NYSE has stated that the primary purpose of the proposed rule changes "is to eliminate unnecessary language . . . and to organize the various constitutional and rule provisions relating to member organization formation, approval and changes into a cohesive set of requirements."

Notice of the proposed membership rule changes, together with the terms of substance, was given in Securities Exchange Act Release No. 13469 (Apr. 25, 1977) and was published in the Federal Register (42 FR 22446). Interested persons were invited to submit written data, views and arguments by May 24, 1977. On January 15, 1979, the NYSE filed amendments to SR-NYSE-77-14. On April 2, 1979, the Commission, in Securities Exchange Act Release No. 15689 (44 FR 21106), approved certain of the proposed rule changes contained in SR-NYSE-77-14 and deferred action on other proposed rule changes in that filing pending further review of those changes. On November 2, 1979, the NYSE filed additional amendments to SR-NYSE-77-14 ("Amendment No. 2"). Those amendments are technical in nature and clarify the intent of the proposed rule changes.

The Commission has determined at this time to approve the proposed rule changes contained in SR-NYSE-77-14, enumerated below, that have been amended by Amendment No. 2. The

Commission has also approved the proposed deletion of various existing NYSE rules which are superseded by the rules approved in this order. The changes being approved contribute to the fair administration of the NYSE, conform certain of the NYSE's rules to the requirements of the Act, as amended, and the rules thereunder, and generally eliminate restrictions upon membership that are not required by the Act.

The changes in SR-NYSE-77-14 relating primarily to the formation and approval by the NYSE of a "member organization" that the Commission is today approving relate to: (1) specification of those supervisory areas for which principal executive officers must be responsible;<sup>1</sup> (2) clarification of the circumstances in which a member corporation may issue non-voting common stock;<sup>2</sup> (3) standards for NYSE approval of a member corporation's acquisition or disposition of its publicly held securities;<sup>3</sup> and (4) standards for NYSE approval of various financial matters that may affect the financial responsibility and operational capability of a member.<sup>4</sup> As noted above, various existing NYSE rules have been deleted.<sup>5</sup>

With respect to those proposed rule changes referenced above that the Commission is today approving, the Commission finds that such proposed rule changes as set forth in File No. SR-NYSE-77-14, as amended, are consistent with the requirements of the Act and rules and regulations thereunder applicable to national securities exchanges.<sup>6</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), that the proposed amendments to the rules enumerated above be and they hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
*Secretary.*

[FR Doc. 36674 Filed 11-27-79; 8:45 am]  
BILLING CODE 8010-01-M

[Rel. No. 10948; 812-4534]

**Smith Barney, Harris Upham & Co., Inc., et al.; Filing of Application for an Order Granting Exemption**

November 21, 1979.

In the matter of Smith Barney, Harris Upham & Co., Inc., Blyth Eastman Dillon & Co., Inc., Drexel Burnham Lambert, Inc., Tax Exempt Securities Trust, Harris, Upham Tax-Exempt Fund, Corporate Securities Trust, c/o Smith Barney, Harris Upham & Co. Inc., 1345 Avenue of the Americas, New York, N.Y. 10019 (812-4534).

Notice is hereby given that all presently outstanding or subsequently issued Series of Tax Exempt Securities Trust and Harris, Upham Tax-Exempt Fund and the long term debt series of the Corporate Securities Trust, registered under the Investment Company Act of 1940 ("Act") as unit investment trusts (collectively, the "Trusts" or the individual Series thereof, a "Series"), and Smith Barney, Harris Upham & Co. Incorporated, Blyth Eastman Dillon & Co. Incorporated and Drexel Burnham Lambert Incorporated, Sponsors of the Trusts (collectively, the "Sponsors") (collectively with the Trusts, the "Applicants"), filed an application on September 7, 1979, and amendments thereto on October 24, 1979, and November 13, 1979, requesting on order of the Commission (1) pursuant to Section 8(c) of the Act exempting certain exchange transactions of the Applicants from the provisions of Section 22(d) of the Act, and (2) pursuant to Section 11 of the Act permitting the exchange of units of any Series of any of the Trusts for units of any other Series thereof at net asset value plus a fixed and reduced sales charge of \$25 per unit pursuant to an Exchange Option.

All interested persons are referred to the application on file with the Commission for a statement of the representation made therein, which are summarized below.

The Trusts are made up of one or more Series of separate unit investment trusts registered under the Securities Act of 1933. While the structures of the Trusts and the various Series are very similar in most respects, the investment objectives of the Trusts are different. The primary investment objective of Tax

Exempt Securities Trust and Harris, Upham Tax-Exempt Trust are tax-exempt income, while the primary investment objective of Corporate Securities Trust is income which is subject to Federal income-taxation. In addition, subgroupings of Series under the basic Trust structures are different (e.g. some series of the Trusts are invested in long-term municipal bonds, while others are invested in intermediate term municipal bonds). In the future, it can be expected that additional Series of the Trusts may be organized with investment objectives which, while they will be similarly structured and consistent with the basic investment objectives of the Trusts of producing tax-exempt or taxable income, will have their particular investment objectives oriented towards specialized investments within general categories.

The Applicants state that at the present time more than 50 Series of the Trusts have been issued, comprising portfolios of underlying securities aggregating some \$900,000,000, and additional Series are being periodically created and offered to the public. The creation and public offering of all existing Series of the Trusts has been undertaken with a view to full compliance with the requirements of the Act and the Securities Act of 1933, and it is anticipated that subsequent offerings of new Series will comply in all respects with those Acts.

The Applicants state that although the structure of particular Trusts and particular Series differ in various respects depending on the nature of the underlying portfolios, the essential procedure followed in all cases is for the Sponsors to acquire a portfolio of securities believed by them to satisfy the standards applicable to the investment objectives of the particular Series, which is then deposited in trust with a corporate fiduciary in exchange for certificates representing units of undivided interest in the deposited portfolio. These units are then offered to the public at a public offering price which is based upon the offering prices of the underlying securities plus a sales charge, which is currently 4 percent of the public offering price. The sales charge applicable to future Series may be varied by the Sponsors.

The Applicants state that although the Sponsors are not legally obligated to do so, the Sponsors maintain a secondary market for Units of outstanding Series and continually offer to purchase those Units at prices based upon the offering side evaluation of the underlying bonds, as determined by the independent

<sup>1</sup> Rule 311(b)(5).

<sup>2</sup> Rule 311(e).

<sup>3</sup> Rule 312(g).

<sup>4</sup> Rules 312 (h), (j) and (k).

<sup>5</sup> Const. Art. IX, Sections 7(b)(4) and 7(h); Rules 320 (b), (d), (e), (g) and (i). Those proposed deletions were contained in SR-NYSE-77-14 as originally filed. The NYSE withdrew in Amendment No. 2 its proposed Rule 311.16, which was contained in SR-NYSE-77-14, as originally filed.

<sup>6</sup> This finding constitutes approval only of the specific additions and deletions made in the cited rules in File No. SR-NYSE-77-14 and thus should not be construed as a statement by the Commission that any such rule, as amended, has necessarily been brought into full compliance with the Act. See Section 31(b) of the Securities Acts Amendments of 1975 (Pub. L. No. 94-29 (June 4, 1975)); Securities Exchange Act Release Nos. 13027 (Dec. 1, 1976) and 12167 (Mar. 2, 1976).

evaluator. If the Sponsors discontinue maintaining such a market at any time, the Units of the Series can be liquidated by holders only by direct presentation to the Trustee at redemption prices based upon the bid side evaluation of the underlying bonds.

The Applicants state that the Sponsors propose to offer, as described below, an exchange option (the "Exchange Option") to certificateholders of the various Series of all of the Trusts. The purpose of the Exchange Option would be to provide investors in any of the Series a convenient means of transferring interests as their investment requirements change into any other Series of any of the Trusts. If the Sponsors implement the Exchange Option, they would intend to hold it open under most circumstances. However, they reserve the right to modify, suspend or terminate the Exchange Option at any time without further notice to certificateholders.

The Applicants state that it is intended that the Exchange Option will operate as follows: a certificateholders wishing to dispose of his Units in a Series for which a secondary market is being maintained will have the option to exchange his Units for Units of any other Series of any Trust for which Units are available for sale in the secondary market. While it is not presently contemplated that certificateholders will be permitted to exchange their Units for Units of other Series which are available on original issue, the Sponsors might at some future date determine to permit such exchanges. When any certificateholder notifies the Sponsors of his desire to exercise such an Exchange Option, the Sponsors will deliver to such certificateholder a current prospectus for those Series in which the certificateholder has indicated an interest and which the Sponsors have available to offer to the certificateholder as a result of acquisitions by them in the secondary market. The certificateholder may then select the Series into which he desires his investment to be converted. As noted above, the Sponsors intend to maintain a secondary market for the Units of each Series of the Trusts. However, there is no obligation to maintain such a market and the Exchange Option is not meant in any way to create such an obligation.

The Applicants state that the Exchange Option will operate in a manner essentially identical to any secondary market transaction, except that the Sponsors propose to allow a reduced sales charge for all transactions

effected pursuant to the Exchange Option. Heretofore, Units of any Series repurchased by the Sponsors have been resold at a public offering price based upon the offering side evaluation of the underlying securities plus a sales charge of 5 percent (in the case of all series of Tax Exempt Securities Trust except Intermediate Term Series), 4 percent (in the case of Harris, Upham Tax-Exempt Fund and the long term debt series of the Corporate Securities Trust) and 3 percent (in the case of the Intermediate Term Series of Tax Exempt Securities Trust). The Sponsors propose to sell Units pursuant to the Exchange Option at a price equal to the offering side evaluation of the underlying securities divided by the number of Units outstanding plus a fixed charge of \$25 per Unit (which can be expected to approximate about 2.5 percent of the offering price but, of course, the actual percentage will change depending upon changes in market value of the underlying securities). The certificateholder will not be permitted to make up any difference between the amount representing the Units being submitted for exchange and the Units of the new Series acquired. That is to say, the certificateholder will be permitted to acquire pursuant to the Exchange Option whole Units only, and any excess amounts representing the sales price of Units submitted for exchange will be remitted to the certificateholder. The suggested reduced sales charge of \$25 rather than the customary sales charges for regular primary and secondary market sales is proposed by the Applicants as a result of certain cost savings. In the judgment of the Applicants the proposed reduction will be beneficial to investors.

To illustrate how the Exchange Option would work, a holder of three Units of a Series with a public offering price of \$1,020 may seek to exchange such Units into Units of another Series with a public offering price of \$880. In this example, the certificateholder's Units will produce in the exchange \$3,060 which amount may be invested in Units of the other Series. Should three Units of the other Series be acquired the cost would be \$2,715 (\$2,640 for the Units and a \$75 sales charge). The remaining \$345 would be returned to the certificateholder in cash.

The Applicants state that under the proposed Exchange Option, a person desiring to dispose of Units of one Series and acquire Units of another Series may wish to do so for a number of reasons—such as changes in his or her particular investment goals or requirements or in

order to take advantage of possible tax benefits flowing from the exchange. Taking these factors into account, it is likely that there will be a continuing need to assess an investor's individual financial and tax position and in all probability the account executives of the Sponsors will actively participate in counseling the investor as to the proper course of action to follow taking into account all of the relevant factors involved. However, Applicants state that because the investor is an existing customer whose essential investment needs have been already identified should produce some transaction savings. Further, in view of the fact that all the Trusts are very similar investment vehicles, an exchanging certificateholder may require somewhat less advice than if he were acquiring an interest in an entirely different kind of investment. It is the belief of the Applicants that a charge of \$25 is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses which are contemplated in connection with these exchange transactions. This sales charge compares favorably to the regular sales charges applicable to non-exchange transactions in connection with primary and secondary sales of Units of the Trusts; and the Applicants contend that such a sales charge is warranted in that such charge should cover the reasonable costs related to the exercise of the Exchange Option and yet give exchanging certificateholders an opportunity to share in expected cost savings. Applicants state that it is appropriate to pass such cost savings on to exchanging certificateholders.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal

underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The sales charge described in the prospectus of each of the Series for effecting regular secondary market purchase and sale transactions is greater than the sales charge which will be applicable to transactions under the Exchange Option. Rule 22d-1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the Exchange Option.

Section 6(c) of the Act provides, in pertinent part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 13, 1979 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 79-38677 Filed 11-27-79; 8:45 am]  
BILLING CODE 8010-01-M

[Rel. No. 6152; 18-46]

**Wolf, Block, Schorr & Solis-Cohen Retirement Plan; Filing of Application for Order**

In the matter of the Wolf, Block, Schorr and Solis-Cohen Retirement Plan, 12th Floor, Packard Building, Philadelphia, Pa. 19102 (18-46).

Notice is hereby given that Wolf, Block, Schorr and Solis-Cohen ("Applicant"), a law firm organized as a partnership under the laws of the State of Pennsylvania, filed an application on June 21, 1979, for exemption from the registration requirements of the Securities Act of 1933 (the "Act") for participations or interests issued in connection with the Wolf, Block, Schorr and Solis-Cohen Retirement Plan (the "Plan"). All interested persons are referred to that application which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

**Introduction**

The Plan covers all partners, legal associates hired or retained on a special associate basis, and all nonlawyer employees of Applicant who have both attained the age of 25 and have completed one year of service (as that term is defined in the Plan). As of May 31, 1979, 62 partners, 2 special associates, and 160 nonlawyer employees were participants in the Plan.

The Plan is an "Employee Benefit Plan" within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA") which covers persons who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended, (the "Code") and, therefore, the exemption provided by Section 3(a)(2) of the Act for interests or participations in certain employee benefit plans of corporate employers is inapplicable.

Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent the Commission determines

this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Description and Administration of the Plan**

The Plan is a defined contribution plan originally adopted effective February 1, 1968. This was amended and restated in its entirety effective February 1, 1976, in order to comply with ERISA. The Internal Revenue Service issued a determination letter on January 12, 1978 determining that the Plan was qualified under Section 401(a) of the Code. The Plan was further revised and restated in its entirety as of May 31, 1979, and application to the Internal Revenue Service for a new letter of determination with respect to the Plan, as revised and restated was made on June 1, 1979.

Under the Plan, Applicant contributes to the Plan, on behalf of each participant, an amount equal to 3.19 percent of the first \$12,000 of that participant's compensation and 8.19 percent of the compensation of that participant in excess of \$12,000. For this purpose only the first \$100,000 of a participant's compensation is taken into account and no more than \$7,500 may be contributed on behalf of any participant with respect to any one plan year.

In addition to the foregoing, each participant may make voluntary contributions to the Plan for any Plan year of not less than 2 percent nor more than 10 percent of his compensation for such year. For this purpose as well, only the first \$100,000 of the participant's compensation is taken into account.

Decisions concerning the selection and retention of investment categories are made by Applicant's Administrative Committee, subject to the approval of Applicant's Executive Committee. The Administrative Committee has the authority to control and manage the operation and administration of the Plan, including the interpretation of the Plan, the determination of questions of fact arising under the Plan, the filing of all returns and reports with respect to the Plan, distribution to participants of reports and other information required under the Plan and the promulgation of rules and regulations for the administration of the Plan. All costs and expenses of administration of the Plan, including the Trustee's fees, are paid by Applicant. The present Trustee is The Provident National Bank.

The investment categories currently available under the Plan are as follows:

(a) A short term fixed income investment fund,

- (b) A bond fund,  
 (c) The Provident National Bank H.R. 10 Self-Employed Equity Fund, and  
 (d) Saving certificates or certificates of deposit.

Contributions by or on behalf of participants who fail to designate an investment category are invested in the short term fixed income fund.

#### Discussion

Applicant contends if the Firm's business were organized in corporate form, interests and participations in the Plan would be exempt from registration pursuant to Section 3(a)(2) of the Act. It is only because of the participation of "employees" within the meaning of Section 401(c)(1) of the Code that the exemption is not available.

Applicant further contends that the Plan does not present the risks associated with the sale of interests or participations in multi-employer plans by financial institutions with which Congress was primarily concerned when it drafted Section 3(a)(2). The Plan is not a master or prototype plan designed to be marketed by a promoter to unrelated self-employed persons.

Applicant represents that the Firm exercises substantial administrative responsibility with respect to the Plan, and has employed independent experts to provide investment management and advisory services; that because the Plan is subject to the requirements of ERISA, the Firm must provide descriptive and financial information to Plan participants; that due to the nature of the Firm's business, which involves complex financial matters, the Firm is able to protect its interests and those of Plan participants.

Applicant concludes that for the foregoing reasons, granting the requested exemptive orders would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 14, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address

stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificates) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following December 14, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,  
 Secretary.

[FR Doc. 79-36671 Filed 11-27-79; 8:45 am]  
 BILLING CODE 8010-01-M

[Release No. 16353; SR-SCCP-79-12]

#### Stock Clearing Corp. of Philadelphia ("SCCP"); Order Approving Proposed Rule Change

November 20, 1979.

On August 7, 1979, SCCP filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(B)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change designating SCCP as an agent of the Philadelphia Depository Trust Company ("Philadep") to receive and deliver securities and to effect daily money settlements on behalf of dual SCCP and Philadep participants.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16123, August 17, 1979) and by publication in the Federal Register (44 FR 50125, August 27, 1979). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,  
 Secretary.

[FR Doc. 79-36669 Filed 11-27-79; 8:45 am]  
 BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0219]

#### Allied Bancshares Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On May 6, 1979, a notice was published in the Federal Register (44 FR 28741) stating that an application had been filed by Allied Bancshares Capital Corporation, P.O. Box 3326, Houston, Texas 77001, with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1979)), for a license to operate as a small business investment company (SBIC).

Interested parties were given until the close of business May 31, 1979, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 06/06-0219 on November 1, 1979, to Allied Bancshares Capital Corporation to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: November 21, 1979.

Peter F. McNeish,  
 Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-36621 Filed 11-27-79; 8:45 am]  
 BILLING CODE 8025-01-M

[License No. 06/06-0224]

#### Fluid Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On August 6, 1979, a notice was published in the Federal Register (44 FR 46012) stating that an application had been filed by Fluid Capital Corporation, 1420 Carlisle Boulevard, N.E., Albuquerque, New Mexico 87110, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1979)), for a license to operate as a small business investment company (SBIC). The company has since moved

to Suite 527, 200 Lomas Blvd., N.W., Albuquerque, New Mexico 87110.

Interested parties were given until the close of business August 21, 1979, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 06/06-0224, on November 2, 1979, to Fluid Capital Corporation to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 21, 1979.

Peter F. McNeish,

*Acting Associate Administrator for Finance and Investment.*

[FR Doc. 79-36620 Filed 11-27-79; 8:45 am]

BILLING CODE 8025-01-M

[Proposal No. 05/05-0145]

**Frontenac III Corp.; Application for a License as a Small Business Investment Company**

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1979)), by Frontenac III Corporation, 208 South LaSalle Street, Chicago, Illinois 60604, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. *et seq.*)

The proposed officers, directors and shareholders will be:

*Name and Address, Title or Relationship, Percent of Ownership*

Frontenac Company, 208 South LaSalle Street, Chicago, Illinois 60604, General Manager, 21.11.

Martin J. Koldyke, 208 South LaSalle Street, Chicago, Illinois 60604, Chairman of the Board, Secretary, Asst. Treasurer, Director.

David A. R. Dullum, 208 South LaSalle Street, Chicago, Illinois 60604, President, Treasurer, Director.

Max A. Roesler, 1301 South Harrison Street, Fort Wayne, Indiana 46801, Director.

Lincoln National Corporation, 1301 South Harrison Street, Fort Wayne, Indiana 46801, 66.67.

Laird Norton Corporation, 1300 Norton Building, Seattle, Washington 98104, 10.2.

The Frontenac Company is a limited partnership that has as one of its functions the management of Frontenac Capital Corporation, an SBIC located in Chicago, Illinois.

The Applicant proposed to begin operations with a total capitalization of \$2,240,000 and will be a source of equity

capital and long term loans for qualified small business concerns. The Applicant intends to render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than December 13, 1979, submit written comments on the proposed SBIC to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in newspaper of general circulation in Chicago, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 19, 1979.

Peter F. McNeish,

*Acting Associate Administrator for Finance and Investment.*

[FR Doc. 79-36615 Filed 11-27-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0184]

**Grocers Capital Corp.; Filing of Application for Approval of Conflict of Interest Transaction Between Associates**

Notice is hereby given that Grocers Capital Company (Grocers) 2601 S. Eastern Avenue, Los Angeles, California 90040, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to Section 107.1004 of the regulations governing small business investment companies (13 C.F.R. 107.1004 (1979)) for approval of a conflict of interest transaction.

Grocers proposes to loan \$80,000 to Herman Lopez DBA La Bodega Market (La Bodega), 110 E. Olive Street, San Ysidro, California 92073. The proceeds of the loan will be used to purchase either capital goods or inventory from Grocers Equipment Company (G.E.C.), and other suppliers. All of Grocer's stock is owned by subsidiaries of Certified Grocers of California, Ltd. (Certified), a retailer-owned grocery cooperative. G.E.C. a subsidiary of Certified, is a 41 percent shareholder of Grocers and is defined as an Associate

by § 107.3 of SBA Rules and Regulations. As a result, Grocers financing of La Bodega falls within the purview of § 107.1004(b)(5) of the SBA Regulations. In addition since 50 or more percent of the funds are to be used to purchase goods or services from an Associate of Grocers the transaction falls within the restrictions of § 107.1001(g) of the SBA Regulations. Grocers loan to La Bodega requires prior written approval of SBA.

Notice is hereby given that any person may not later than December 13, 1979, submit written comments to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W. Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the San Ysidro and Los Angeles, California areas.

(Catalog of Federal Assistance Programs No. 95.011, Small Business Investment Companies)

Peter F. McNeish,

*Acting Associate Administrator for Finance and Investment.*

Dated: November 20, 1979.

[FR Doc. 79-36619 Filed 11-26-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0184]

**Grocers Capital Corp.; Filing of Application for Approval of Conflict of Interest Transaction Between Associates**

Notice is hereby given that Grocers Capital Company (Grocers) 2601 S. Eastern Avenue, Los Angeles, California 90040, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004(1979)) for approval of a conflict of interest transaction.

Grocers proposes to loan \$100,000 to Dolan Naemi DBA PayLow Market (PayLow), 420 S. Meadowbrook, San Diego, California 92112. The proceeds of the loan will be used to purchase either capital goods or inventory from Grocers Equipment Company (G.E.C.), and other suppliers. All of Grocer's stock is owned by subsidiaries of Certified Grocers of California, Ltd., (Certified), a retailer-owned grocery cooperative. G.E.C. a subsidiary of Certified, is a 41 percent shareholder of Grocers and is defined as an Associate by § 107.3 of SBA Rules and Regulations. As a result, Grocers financing of PayLow falls within the

purview of § 107.1004(b)(5) of the SBA Regulations. In addition since 50 or more percent of the funds are to be used to purchase goods or services from an Associate of Grocers the transaction falls within the restrictions of § 107.1001(g) of the SBA Regulations. Grocers loan to PayLow requires prior written approval of SBA.

Notice is hereby given that any person may not later than (15 days from the date of publication of this Notice) submit written comments to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W. Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the San Diego and Los Angeles, California areas.

(Catalog of Federal Assistance Programs No. 95.011, Small Business Investment Companies)

Dated: November 19, 1979.

Peter F. McNeish,

*Acting Associate Administrator for Finance and Investment.*

[FR Doc. 79-36616 Filed 11-27-79; 8:45 am]

BILLING CODE 8025-01-M

**[Proposed License No. 09/09-5251]**

**Lasung Investment & Finance Co.;  
Application for License To Operate as  
a Small Business Investment Company**

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Lasung Investment and Finance Company (applicant), with the Small Business Administration (SBA), pursuant to 13 C.F.R. 107.102 (1979).

The officers, directors and stockholders of the applicant are as follows:

Jung Su Lee, 5142 Los Bonitas Way, Los Angeles, CA 90027, President, Director, 46% Stockholder.

Hyo Kil Yang, 2223 Ceciana Dr., Hacienda Heights, CA 91745, Vice Pres., Director, Treasurer, 40% Stockholder.

Ester Youngrim Lee, 5142 Los Bonitas Way, Los Angeles, CA 90027, Secretary, Director, 7% Stockholder.

Hyung Ki Jin, 625 N. Beachwood Dr., Los Angeles, CA 90004, Investment Advisor, Director, 7% Stockholder.

The applicant, a California corporation, will maintain an office at 3121 W. Olympic Boulevard, Los Angeles, California 90006 and will begin operations with \$507,000 of paid-in capital and paid-in surplus derived from the sale of 5,070 shares of common stock to the applicant's officers and directors.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under this management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than December 13, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 19, 1979.

Peter F. McNeish,

*Acting Associate Administrator for Finance and Investment.*

[FR Doc. 79-36617 Filed 11-27-79; 8:45 am]

BILLING CODE 8025-01-M

**[Proposed License No. 04/04-5179]**

**South Florida Capital Corp.;  
Application for License To Operate as  
a Small Business Investment Company**

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by South Florida Capital Corporation (applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1979).

The officers, directors and stockholders of the applicant are as follows:

Julio P. Dominquez, 12561 S.W. 23 Terrace, Miami, Florida 33175, President.  
Francisco de la Camara, 630 Hampton Lane, Key Biscayne, Florida 33149, Secretary.  
Manuel A. Vega, Jr., 720 W. Dilido Drive, Miami, Florida 33169, Treasurer.  
McIntosh and Company, 2205 N.W. 70th Avenue, Miami, Florida 33122, 100% Stockholder.

The sole beneficial owner of the applicant at the completion of the initial financing will be McIntosh and Company. McIntosh and Company has two beneficial owners, Manuel A. Vega, Jr. (75% Stockholder in McIntosh) and Francisco de la Camara (25% Stockholder in McIntosh). McIntosh and Company (McIntosh) is engaged as a purchasing agent, export management company, exporting wholesaler and manufacturer's representative.

The applicant, a Florida Corporation, will maintain an office at 2205 N.W. 70th Avenue, Miami, Florida 33122 and will begin operations with \$500,000 of paid-in capital and paid-in surplus derived from the sale of 2,000 shares of common stock to McIntosh and Company.

The applicant's investment policy will be to make investments solely in small business concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than December 13, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Miami, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 16, 1979.

Peter F. McNeish,  
Acting Associate Administrator for Finance  
and Investment.

[FR Doc. 79-36618 Filed 11-27-79; 8:45 am]  
BILLING CODE 8025-01-M

### Region V Advisory Council Meeting; Public Meeting

The Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, Ohio, will hold a public meeting from 9:00 a.m. to 11:00 a.m., Wednesday, December 19, 1979, at the AJC Federal Building, Room 317, 1240 East Ninth Street, Cleveland, Ohio, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call S. Charles Hemming, District Director, U.S. Small Business Administration, AJC Federal Building, Room 317, 1240 East Ninth Street, Cleveland, Ohio 44199, (216) 293-4182.

Dated: November 20, 1979.

Michael B. Kraft,  
Deputy Advocate for Advisory Councils.

[FR Doc. 79-36614 Filed 11-27-79; 8:45 am]  
BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

### Office of the Secretary

[Public Notice 694]

### Privacy Act of 1974; Proposed New System of Records

Notice is hereby given that the Department of State proposes to establish a new system of records pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(o)) and the Office of Management and Budget Circular No. A-108, Transmittal Memorandum No. 1, dated September 30, 1975 (40 FR 45877, October 3, 1975).

This new system is entitled "Parking Permit and Car Pool Records, STATE-52". The records will be used to establish administrative and management controls over the use of parking facilities at the Main State Building, one annex, and one parking lot. Individuals applying for the parking spaces or for admission to an existing car pool will submit information pertaining to their employment and transportation requirements. Employees of the Department of State, other Federal agencies, and private organizations within the Washington, D.C. area will be subjects of this system of records.

Any persons interested in commenting on the new system of records may do so by submitting comments in writing to the Information and Privacy Coordinator, Foreign Affairs Document and Reference Center, Room 1239, Department of State, 2201 C Street, NW., Washington, D.C. 20520. If no comments are received by January 28, 1980, the Department will implement the new record system.

The proposed "Parking Permit and Car Pool Records, STATE-52" will read as set forth below.

Dated: November 7, 1979.

For the Secretary of State.  
Ben H. Read,  
Deputy Under Secretary for Management.

#### STATE-52

##### SYSTEM NAME:

Parking Permit and Car Pool Records.

##### SECURITY CLASSIFICATION:

Unclassified.

##### SYSTEM LOCATION:

Department of State, 2201 C Street, NW., Washington, D.C. 20520.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of State, AID and ACDA employees, and full time employees of private organizations located in the building who have permits for State Department parking facilities; individuals who car pool with employees holding such permits; persons interested in joining a car pool.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Parking Permit Information: title and grade of the employee issued a parking permit, home address, year and make of car, license number, bureau, office, room and telephone number, arrival time, departure time, and type of parking permit. Car Pool Information: Name of member of car pool, office address and phone number, make of car, license number and state, home address, and work hours.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 811a; 22 U.S.C. 2658, as amended.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The purpose of the information in this system is to facilitate control over and issuance of parking permits for the Department of State, AID, ACDA personnel and full time employees of private organizations located in the Department's buildings. The information

will be used to facilitate the formation of car pools with employees who have been issued parking permits. Principal users of this information outside the Department of State are employees of other Federal agencies and private businesses in the Washington, D.C. area who would be interested in forming car pools. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the Federal Register (42 FR 49699, September 27, 1977).

##### POLICIES AND PRACTICES OR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

###### STORAGE:

Computer media, hard copy, IBM Office System 6.

###### RETRIEVABILITY:

By the individual's name, bureau, office, zip code, or handicap (if applicable).

###### SAFEGUARDS:

All employees of the Department of State and the Foreign Affairs Recreation Association have undergone a thorough background security investigation. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secure file cabinets or in restricted areas, access to which is limited to authorized personnel.

###### RETENTION AND DISPOSAL:

This information is maintained until the permit is revoked or reissued, or if the holder of the permit leaves the Department, transfers to another organizational unit of the Department, or is transferred out of the Washington, D.C. area.

###### SYSTEM MANAGER(S) AND ADDRESS:

Chief, General Services Division,  
OPR/GS, Room 1493, Department of  
State, 2201 C Street, NW., Washington,  
D.C. 20520.

###### NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Parking Permit and Car Pool Records might have information pertaining to them, should write to the Information and Privacy Coordinator, Foreign Affairs Document and Reference Center, Room 1239, Department of State, 2201 C Street, NW., Washington, D.C. 20520. The individual must specify that he/she wishes the Parking Permit and Car Pool Records to be checked. At a minimum, the individual should include: Name, date and place of birth,

current mailing address and zip code, signature.

**RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Document and Reference Center (address above).

**RECORD SOURCE CATEGORIES:**

By the individual.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 79-36525 Filed 11-27-79; 8:45 am]

BILLING CODE 4710-05-M

[Public Notice CM-3/247]

**Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting**

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 19, 1979 at 10:00 a.m. in Room 511 of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. This Study Group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at international CCITT meetings.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Richard H. Howarth, State Department, Washington, D.C. 20520, telephone (202) 632-1007.

Dated: November 19, 1979.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 79-36545 Filed 11-27-79; 8:45 am]

BILLING CODE 4710-07-M

**DEPARTMENT OF THE TREASURY**

**Comptroller of the Currency**

**Federal Branches and Agencies of Foreign Banks; Proposed Capital Equivalency Deposit Agreement Form**

**AGENCY:** Comptroller of the Currency, Treasury.

**ACTION:** Proposed Capital Equivalency Deposit Agreement Form.

**SUMMARY:** This proposed deposit agreement form implements Section 4 of the International Banking Act of 1978 (Pub. L. 95-369), which requires a foreign bank that establishes a Federal branch or agency in the United States to place on deposit with a member bank, located in the same state as such branch or agency, dollar deposits or investment securities to serve as a capital substitute. The capital equivalency deposit must be maintained pursuant to a deposit agreement "in such form and containing such limitations and conditions as the Comptroller may prescribe".

**DATES:** Written comments must be received on or before December 28, 1979.

**ADDRESSES:** Comments should be addressed to Mr. John E. Shockey, Chief Counsel, Comptroller of the Currency, Washington, D.C. 20219.

**FOR FURTHER INFORMATION CONTACT:** Mr. William B. Glidden, Senior Attorney, Comptroller of the Currency, Washington, D.C. 20219, (202) 447-1880.

**SUPPLEMENTARY INFORMATION:** The Comptroller of the Currency solicits comments on the proposed capital equivalency deposit agreement, which will be used by foreign banks having one or more Federal branches or agencies in the United States. We are particularly hopeful of receiving suggestions from foreign banks or their counsel, domestic member banks that might in future serve as depositories of capital equivalency deposits, and state banking supervisors in those states that permit the establishment of branches or agencies of foreign banks.

Section 4 of the International Banking Act provides that upon opening a Federal branch or agency in any state and thereafter, a foreign bank must keep on deposit with a designated member bank in the same state dollar deposits or investment securities of the type that may be held by national banks for their own account. This provision is implemented by the Comptroller's regulations at 12 CFR 28.6, which require that capital equivalency deposits be maintained pursuant to a deposit agreement approved by the Comptroller.

The regulations also stipulate that the funds deposited and investment securities placed in safekeeping at the depository bank to satisfy the capital equivalency requirements of the foreign bank shall be segregated on the books and records of the depository bank, shall not be diminished in aggregate value by withdrawal without the prior approval of the Comptroller, shall be pledged to the Comptroller, and shall be free from any lien, charge, right of setoff, credit or preference in connection with any claim of the depository bank against the foreign bank. The proposed capital equivalency deposit agreement form incorporates these provisions and adds certain other conditions or terms as well.

**Drafting Information**

The principal drafters of this document were William Glidden, Attorney, and William Ryback and Timothy Sullivan, National Bank Examiners, Comptroller of the Currency.

**Proposed Agreement Form**

In consideration of the foregoing, the following capital equivalency deposit agreement is proposed:

**Capital Equivalency Deposit Agreement**

Whereas, \_\_\_\_\_ (the "Depositor") is a foreign bank organized under the laws of \_\_\_\_\_, and maintains an office(s) in the State of \_\_\_\_\_, licensed by the Comptroller of the Currency pursuant to the International Banking Act of 1978 (Pub. L. 95-369); and

Whereas, \_\_\_\_\_ (the "Depository Bank") is a member bank with its principal office located at \_\_\_\_\_; and

Whereas, the Depositor is required under Section 4 of the International Banking Act and under the Comptroller's regulations at 12 CFR 28.6 to maintain with a designated member bank a capital equivalency deposit in the form of dollar deposits or investment securities of the type that may be held by national banks for their own account;

Now, Therefore, it is agreed among the Comptroller of the Currency, the Depositor, and the Depository Bank:

1. Dollar deposits and investment securities placed in safekeeping at the Depository Bank pursuant to this agreement and in order to satisfy the capital equivalency requirements of the Depositor shall (1) be pledged to the Comptroller; (2) be accompanied by any documentation necessary to facilitate transfer of title in the event of subsequent release to the Comptroller; (3) be segregated on the books and records of the Depository Bank; and (4) be free from any lien, charge, right of setoff, credit or preference in connection with any claim of the Depository Bank against the Depositor.

2. When assets are initially deposited pursuant to this agreement, the Depository Bank shall furnish a receipt to the Depositor and to the Comptroller which identifies the funds and securities comprising such initial

capital equivalency deposit. The Depository Bank's receipt shall specify for each asset the complete title, interest rate, series, serial number (if any), face value, market value, maturity date and call date. The aggregate total value of the initial capital equivalency deposit, measured in the case of investment securities by the lower of principal amount or market value, shall be stated on the receipt.

3. The Depository Bank shall not allow assets comprising the capital equivalency deposit to be withdrawn or diminished in aggregate value unless it receives the prior written permission of the Comptroller. Unless otherwise ordered by the Comptroller, the Depository Bank may allow exchange or substitution of capital equivalency assets by the Depositor, without prior written permission of the Comptroller, when the Depository Bank is satisfied that the aggregate value of the new assets being deposited is the same or greater than the value of the assets being replaced. For purposes of this paragraph, the value of investment securities is the lower of principal amount or market value determined as of the date of the exchange or substitution.

4. The Depository Bank shall permit representatives of the Comptroller or the Depositor to examine the capital equivalency deposit during regular business hours. Upon request, the Depository Bank shall furnish the Comptroller with a current list of the assets in the capital equivalency deposit maintained pursuant to this agreement.

5. The Depositor shall be permitted to collect income on the assets in its capital equivalency deposit unless the Comptroller issues a contrary order to the Depository Bank.

6. The Depository Bank shall release to the Depositor assets in the capital equivalency deposit only upon the written permission of the Comptroller. The Depository Bank shall release to the Comptroller assets in the capital equivalency deposit upon certification by the Comptroller that a receiver or conservator has been appointed in connection with one or more Federal branches or agencies of the Depositor. Once the total capital equivalency deposit has been turned over to the Depositor or the Comptroller, as the case may be, the Depository Bank shall be discharged from further obligation under this agreement.

7. The Comptroller may by written order relieve the Depositor or the Depository Bank from compliance with any term or condition of this agreement.

8. The Comptroller shall not be required to pay for any services under the agreement.

9. The capital equivalency deposit agreement may, with the written concurrence of the Comptroller, be terminated by the Depositor or the Depository Bank upon at least sixty days written notice to the other party.

10. All written communications required under this agreement shall be mailed or delivered to each party at the following addresses:

The Depository Bank:

The Depositor:

The Comptroller:

In witness whereof, the Depositor, the Depository Bank and the Comptroller of the Currency have caused this agreement to be duly executed as of today's date.

Date: \_\_\_\_\_

Signatures: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Dated: November 20, 1979.

John G. Heimann,  
Comptroller of the Currency.

[FR Doc. 79-36546 Filed 11-27-79; 8:45 am]

BILLING CODE 4810-33-M

#### Office of the Secretary

[Supplement to Department Circular—  
Public Debt Series—No. 28-79]

#### Notes of Series Z—1981; Interest Rate

November 23, 1979.

The Secretary announced on November 21, 1979, that the interest rate on the notes designated Series Z-1981, described in Department Circular—Public Debt Series—No. 28-79, dated November 14, 1979, will be 12½ percent. Interest on the notes will be payable at the rate of 12½ percent per annum.

Paul H. Taylor,  
Fiscal Assistant Secretary.

#### Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 79-36622 Filed 11-27-79; 8:45 am]

BILLING CODE 4810-40-M

#### Privacy Act of 1974; Proposed New System of Records

AGENCY: Office of the Secretary,  
Department of the Treasury.

ACTION: Notice of intent to establish a new Privacy Act system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the Assistant Secretary (Legislative Affairs) gives notice of the proposed establishment of a congressional vote

tracking system which will contain records of key Treasury-related votes taken on the floor of the United States Senate and House of Representatives. The computerized system will be used for research purposes and is designed to coordinate information published in various public documents, specifically the Congressional Record.

EFFECTIVE DATE: Comments must be received on or before December 31, 1979. This system will become effective on January 2, 1980, if no public comments are received and the Office of Management and Budget grant the 60 day waiver request.

ADDRESSES: Office of the Assistant Secretary (Legislative Affairs), Department of the Treasury, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Ruth Hargraves, Office of Legislative Affairs, Room 3464, U.S. Treasury, Washington, D.C. 20220, 202-566-2647.

Dated: November 20, 1979.

Walter J. McDonald,  
Assistant Secretary (Administration).

Treasury/OS 00.075

#### SYSTEM NAME:

Legislative Affairs Vote Tracking System.

#### SYSTEM LOCATION:

U.S. Treasury Department, Office of the Assistant Secretary (Legislative Affairs), 15th & Pennsylvania Ave. NW., Washington, D.C. 20220.

#### CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Members of the United States Senate and House of Representatives.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Party, State and district of each Congressional Member, voting records on key Treasury-related legislation, and ratings by selected public interest organizations.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

#### ROUTINE USES OF RECORDS MAINTAINED IN SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system will be used by the Legislative Affairs staff for background and research purposes.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Maintained on disk files in computer.

**RETRIEVABILITY:**

By name of Congressional Member or key to selected Congressional floor votes.

**SAFEGUARDS:**

The system is designed with computer access codes so that only Treasury-authorized personnel can retrieve records. All information stored in the system, however, are matters of public record.

**RETENTION AND DISPOSAL:**

The system will be maintained for six years, subject to review at the end of that period.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Secretary of the Treasury (Legislative Affairs), U.S. Treasury Department, Washington, D.C. 20220.

**NOTIFICATION PROCEDURE:**

Inquiries under the Privacy Act of 1974 shall be addressed to Disclosure Branch, Room 1322, U.S. Treasury Department, Washington, D.C. 20220. All potential requesters are urged to examine the regulations of the Department of Treasury published in Title 31, *Code of Federal Regulations*, Part 1, Subpart G concerning requirements of this Department and instructions on how to file a request for access.

**RECORD ACCESS PROCEDURES:**

Same as above.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Congressional Record, Congressional Quarterly, Congressional Directory, daily news reports such as the Washington Post and New York Times.

[FR Doc. 79-36586 Filed 11-27-79; 8:45 am]

BILLING CODE 4810-25-M

**VETERANS ADMINISTRATION****Advisory Committee on Health-Related Effects of Herbicides; Meeting**

The Veterans Administration gives notice pursuant to Pub. L. 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. 20420, December 12, 1979, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs in order to formulate appropriate medical policy and procedures in the interest of

veterans who may have encountered herbicidal chemicals used during the Vietnam War.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may only direct questions in writing to the Chairman, Paul A. L. Haber, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Summary minutes of the meeting and rosters of the committee members may be obtained from the Vice-Chairman, Gerrit W. H. Schepers, M.D., Medical Service (111), Department of Medicine and Surgery, Veterans Administration, Washington, D.C. 20420 (Phone 202-389-2550).

Dated: November 23, 1979.

By direction of the Administrator:

John J. Leffler,  
Associate Deputy Administrator.

[FR Doc. 79-36559 Filed 11-27-79; 8:45 am]

BILLING CODE 8320-01-M

**INTERSTATE COMMERCE COMMISSION**

[No. 37222]

**Gift Wrappings & Tyings Association—Petition—Specific Costs for Conrail and Revenue Need as Maximum Rate Level**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of denial of petition for rulemaking.

**SUMMARY:** Petitioner sought treatment of Conrail as a separate sub-region in Official Territory for preparation of cost data and publication of rates. The Commission found that certain separate cost was already available through its Bureau of Accounts. It further found that other relief requested was not appropriate or practical. The Commission will, however, undertake a service audit of Conrail's efficiency.

**FOR FURTHER INFORMATION CONTACT:** Richard Felder, (202) 275-7693.

The above action was taken on November 16, 1979, by the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Commissioner Gresham agrees with the decision to conduct a service audit but dissents to the majority's refusal to seek comments on the separate operating and cost issues. Commissioner Trantum concurred in the result of the decision. Vice Chairman

Stafford absent and not participating. Commissioner Gaskins not participating.

**SUPPLEMENTARY INFORMATION:** Copies of the complete decision are available, on request, from the Secretary, Interstate Commerce Commission, Washington, D.C. 20423  
Agatha L. Mergenovich,  
Secretary.

[FR Doc. 79-36592 Filed 11-27-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. 9222F, No. 29885]

**Investigation and Suspension; Conrail Surcharge on Pulpboard, and Official—Southern Divisions**

Decided, October 30, 1979.

*It is ordered:* Directing Modified Procedure and Reopening the *official-Southern Divisions* proceeding.

This proceeding will be handled under the modified procedure, following rules 43 to 52 of the Commission's rules of practice, 49 CFR 1100. 43-52. Filing and service of pleading shall follow this schedule, in lieu of the schedule set forth in rule 49:

(a) Opening statement of facts and argument by respondents and any parties supporting respondents within 30 days from the service date of this order;

(b) 30 days after that date, statement of facts and argument by protestants and any supporting parties; and

(c) reply by respondents and any supporting parties 20 days thereafter.

Upon completion of the modified procedure record, oral argument before the Commission will be held at a date to be announced.

This proceeding involves some of the most complex and troubling issues facing the railroad industry today. It is essential to examine each of these points to arrive at a rational, lawful decision which will best meet the needs of all concerned:

(1) Should the \$280 per car surcharge on fibreboard, paperboard, or pulpboard being investigated here be viewed as an attempt to change divisions of line-haul revenues between Conrail and affected Carriers? If not, what is the rational and legal basis for this form of tariff publication?

(2) Assuming the Conrail surcharge is only an attempt to change its revenue divisions with the Southern carriers,

(b) Would the resulting divisions (including both line-haul rate and surcharge) be reasonable and lawful, giving due consideration to the revenues required by the carriers to pay their operating expenses and taxes while receiving a fair return on property held and used for transportation, the

importance of the transportation to the public, the efficiency with which the carriers concerned are operated, whether a particular carrier acts as an originating, intermediate, or delivering line, and other circumstances which ordinarily (without regard to the mileage involved) entitle one carrier to a different proportion of revenues than another carrier?

(c) To what extent has Conrail failed to recoup its costs attributable to this traffic? To what extent, if any, has an imbalance in divisions of revenues contributed to this situation and to the unhealthy financial condition of Conrail and its predecessors? Why did this occur? What relationship between Conrail revenues and costs will result from this surcharge?

(d)(1) Generally speaking, would the result of a surcharge such as this be to enable the less efficient management of one carrier to counter-act the superior operating and other efficiencies of a well-run carrier? Would the surcharge format, if unrestricted, pull the most efficient carrier down to the level of the least efficient? Would it leave adequate incentive for carriers actively to seek to reduce operating costs?

(2) Does the Conrail surcharge ignore the relative efficiencies of the affected carriers? Since Conrail has operated for three and one-half years as a distinct entity, we believe that the efficiency of its management should not be measured in terms of its predecessors' performance. Rather, the inquiry should involve the relative efficiency of the carriers involved since Conrail's operations began, and take into account the relative conditions under which Conrail's and other affected carriers managements were forced to operate at Conrail's inception and the extent to which managerial performance has improved or worsened since that time.<sup>1</sup> The ability of management to meet preset goals is one factor to be considered. We seek comments on what other information or data should be considered in the time available in this proceeding.

(e) Do the rates as increased by the surcharge unduly discriminate against Southern territory shippers (particularly in favor of Southwest shippers)? Apart from the fact that the South originates a majority of the shipments of these commodities handled by Conrail, why was no surcharge (of a different or the same amount) placed on shipments originating in other territories?

(f) Do Southern shippers have effective transportation alternatives to points served by Conrail? What effect will the surcharge have on other destination carriers where Conrail is the only available bridge carrier? Would competitive considerations tend to encourage more equitable divisions arrangements?

(3) Do the "flag-outs"<sup>2</sup> from application of the surcharge filed on behalf of Canadian Railways, Southern Railways System, Family Lines System, and others constitute an unreasonable practice? Are they an illegal retaliatory action in violation of Conrail's right of independent action under 49 U.S.C. 10706? Is this response sanctioned by 49 U.S.C. 10762(b)(2)?

(4) Are the "flag-ins"<sup>3</sup> by which the Chessie System, Norfolk & Western Ry. Co., and Grand Trunk R. R. Co. agree to give concurrence to the surcharge under section 10762(b)(2) provided that they share in the surcharge revenue lawful?

(5) Is the surcharge format unlawful for any other reason? Assuming that it is (or that the flag-outs or flag-ins are found lawful), but that Conrail is able to show the need for additional revenue to meet its costs of transporting this traffic,

(a) Would cancellation of the applicable through routes and/or joint rates be a preferable alternative? Specifically, why or why not?

These are the matters we consider crucial, but it is not necessarily an all-inclusive list, and parties may introduce other evidence they believe relevant. In the pleadings to be filed under modified procedure, evidence and argument relating to each of the above questions should be separately stated and identified.

Under 49 U.S.C. 10709, a finding of market dominance is called for within 90 days of institution of an investigation under section 10707 as to whether a proposed adjustment will result in unreasonably high rates. If establishment of the Conrail surcharge is unlawful for any other reason, the finding is not necessary. In this proceeding, it is not clear whether this finding ultimately will be needed. This will depend upon the evidence presented in response to our specific questions. In the interim and to prevent possible injustice to the parties, we believe that a finding that Conrail has market dominance is justified. As a practical matter, rail transportation is the dominant means of moving pulpboard from the south to Official

<sup>2</sup> Application of Exceptions 4 and 5, in Item 195, Supplement 278, on page 2, ICC SFA 4564 would make the Conrail charge inapplicable when routed via named carriers.

<sup>3</sup> Exceptions 1, 2, and 3 of Item 195, *supra*.

Territory. Presently, over 90 percent of the traffic moves by rail, and the facilities of both producers and consumers have been built to depend on rail transportation. The immense investment in these facilities reflects, in part, the superior transportation characteristics of pulpboard moved by rail. Although trucks could theoretically move the existing pulpboard traffic, we have doubts about the possibility of the motor carrier alternative. Total diversion would mean well over 150,000 additional truckloads per year. Availability of the trucks and fuel to move these additional loads is questionable. In view of the industry's traditional heavy reliance upon rail transportation, we conclude that shippers could not resort to alternative transportation without suffering severe economic dislocations. This belief leads us to conclude that the participating railroads have market dominance over this traffic.

Conrail is the key link in the pulpboard rail transportation system. The evidence before us now shows that 89 percent of the traffic terminates on Conrail's lines. Conrail is the essential bridge carrier on 4 percent of the remaining traffic. Thus, 93 percent of the rail traffic involves Conrail. From the figures now before us, we conclude that shippers of pulpboard have no viable short run alternative to rail movements, and no feasible alternative to dealing with Conrail. We accordingly conclude that Conrail has market dominance over the traffic. Our finding of market dominance is without prejudice to such adjustments as may appear necessary in light of the response to our specific questions.

Conrail has claimed that the division procedures take too much time and expense, particularly if no other carrier agrees with its position and will share the cost of litigation. Revenue divisions are generally set by agreement of the carriers, very often on a movement-by-movement basis for major shipments. If Commission involvement in a divisions dispute is necessary 49 U.S.C. 10705(e) calls for completion of the evidentiary record within 1 year of filing of a divisions complaint by (a) rail carrier(s) or 2 years of a divisions proceeding begun on the Commission's own motion. After the record is closed, the Commission has 270 days to issue a decision. The statute provides for discovery procedures if a notice of intent to file a complaint is filed.

Although the statute does not specify a time limit between the filing of a notice of intent and the actual complaint, our regulations impose an 18 month

<sup>1</sup> Conrail is a unique entity established by statute, and similar treatment may not be warranted in controversies between other carriers.

deadline. Thus, the maximum period between the first carrier action and final Commission decision is slightly more than 3 years. The statute imposes no time limit on court consideration of a Commission decision. While these changes made by the 4R Act<sup>4</sup> have been a major improvement over the pre-1976 lack of any time deadline for Commission decision, we do not believe that the statute necessarily precludes alternative procedures which would take less time where expedited decisionmaking would be practical and helpful in light of a limited inquiry.

Accordingly, we are reopening the Official—Southern Divisions proceeding to put all parties to that proceeding on notice that the Commission may approve a resettlement of divisions with respect to the commodities involved in this proceeding if doing so is found to be necessary and appropriate.

Parties to this proceeding, *Official—Southern Division*, 287 I.C.C. 497 (1953) 289 I.C.C. 4 (1953), 291 I.C.C. 90 (1953), 294 I.C.C. 739 (1955) and 298 I.C.C. 83 (1956), will be served with a copy of this decision.

We recognize the complexity of the issues raised in this proceeding. We are using our statutory authority under 49 U.S.C. 10707(b)(1) at this time to extend the deadline for decision in this proceeding to June 30, 1980. Since the issues must be decided by then, no recommended report and order is contemplated. No additional special studies are contemplated, although the parties are free to introduce the details of such studies as they may have made. No extensions of time for filing pleadings are contemplated.

Protestants shall timely advise respondents and this Commission of the identity and addresses of the individuals composing the protestants defense committee, if any, and shall specify the number of copies of respondents' statement which are desired; and to whom the copies are to be sent.

This decision shall be printed in the Federal Register in order that all interested parties be given the opportunity to address these matters.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis.

Agatha L. Mergenovich,  
*Secretary.*

Representatives of the Parties Protestants  
F. X. Biasi, American Can Company,  
American Lane, Greenwich, OR 96830.  
B. Gordon, The Family Lines, 500 Water St.,  
Jacksonville, FL 32202.

<sup>4</sup>Section 201 of the Railroad Revitalization and Regulatory Reform Act of 1976; Pub. L. 94-210.

G. N. Weegar, Brown Company, 243 E. Paterson St., Kalamazoo, MI 49007. ✓  
J. P. Deehan, Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470.  
J. M. O'Malley, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19104.  
J. F. Donelan, J. K. Maser III, Donelan, Cleary, Wood & Maser, 914 Washington Bldg., 15th St. and New York Ave., NW., Washington, DC 20005. (For the National Industrial - Traffic League, American Paper Institute, Inc.).  
P. R. Hitchcock, J. J. Paylor, Chessie System Law Department, Terminal Tower, P.O. Box 6419, Cleveland, OH 44101.  
J. A. Helm, St. Regis Paper Company, 150 E. 42nd St., New York, NY 10017.  
R. M. VanHook, Southern Railway System, P.O. Box 1808, Washington, DC 20013.  
R. N. Kharasch, R.W. Ginnane, E.D. Greenberg, K. Mahon, Galland, Kharasch, Calkings, 1054 31st St. NW. and Short, Washington, DC 20007 (For the Southern Paper Traffic Conference).

#### *Tariff Publishing Agent*

J. L. Twigg, Southern Freight Assn., Agent, 151 Ellis St., NE, Atlanta, GA 30303.

#### *Respondents*

R. M. VanHook, Southern Railway Corporation, P.O. Box 1808, Washington, DC 20013.  
C. N. Marshall, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19104.  
S. P. Petraitis, Illinois Central Gulf Railroad, 233 N. Michigan Ave., Chicago, IL 60601.  
B. H. Gordon, The Family Lines, 500 Water St., Jacksonville, FL 32202. P.R. Hitchcock, Chessie System—Law Dept., Terminal Tower, P.O. Box 6419, Cleveland, OH 44101.

[FR Doc. 79-36591 Filed 11-27-79; 8:45 am]

BILLING CODE 7035-01-M

[Rev. I.C.C. Order No. 56 Under S. O. No. 1344]

#### **Rerouting or Diversion of Traffic**

In the opinion of Robert S. Turkington, Agent, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is unable to transport promptly all traffic offered for movement via its lines, because of disruption of service in the previously embargoed territory.

*It is ordered,* (a) *Rerouting traffic.* The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, being unable to transport promptly all traffic offered for movement via its lines, because of disruption of service in the previously embargoed territory, that line is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing

covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 2:00 p.m., November 6, 1979.

(g) *Expiration.* This order shall remain in effect until modified or vacated by order of this Commission.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 6, 1979.

Interstate Commerce Commission.  
Robert S. Turkington,  
*Agent.*

[FR Doc. 79-36590 Filed 11-27-79; 8:45 am]

BILLING CODE 7035-01-M

**Fourth Section Application for Relief***Correction*

In FR 79-35204 appearing on page 65853 in the issue for Thursday, November 15, 1979, in the fourth line, the date "December 30, 1979", should be corrected to read "November 30, 1979".

BILLING CODE 1505-01-M

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**[Finance Docket No. 29170F]****Golden Triangle Railroad;  
Construction and Operation of a Line  
of Railroad in Mississippi***Correction*

In FR 79-34989 appearing on page 65692 in the issue for Wednesday, November 14, 1979, the Finance Docket No. in the heading should have read as set out in the heading of this document.

BILLING CODE 1505-01-M

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**[Finance Docket No. 29171]****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***Correction*

In FR 79-34997 appearing on page 65233 in the issue for Friday, November 9, 1979, the Finance Docket No. in the heading should have read as set out in the heading of this document.

BILLING CODE 1505-01-M

# Sunshine Act Meetings

Federal Register

Vol. 44, No. 230

Wednesday, November 28, 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
Commodity Futures Trading Commission.....	3
National Mediation Board.....	4
Occupational Safety and Health Review Commission.....	5
Postal Service.....	6, 7

1

[M-256, Amdt. 3; Nov. 23, 1979]

### CIVIL AERONAUTICS BOARD.

Notice of addition of item to the November 21, 1979, meeting agenda.

**TIME AND DATE:** 9:30 a.m., November 21, 1979.

**PLACE:** Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

**SUBJECT:** 1a. Draft consumer program for publication in the Federal Register, in voluntary compliance with Executive Order 12160. (Memo 9309, BCP, OCCR).

**STATUS:** Open.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** Item 1a is being added to the November 21, 1979 meeting agenda due to the tight time limits imposed on publication by the President's Special Assistant for Consumer affairs. According, the following Members have voted that Item 1a be added to the November 21, 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

[S-2299-79 Filed 11-23-79; 4:32 pm]

BILLING CODE 6320-01-M

2

[M-257, Nov. 21, 1979]

### CIVIL AERONAUTICS BOARD.

**TIME AND DATE:** 9:30 a.m., November 28, 1979.

**PLACE:** Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

#### SUBJECT:

1. Ratification of Items adopted by notation.

2. Docket 35568, Final rule to deregulate foreign air freight forwarders. (Memo 8698-D, BIA, OGC, BDA, BALJ, BCP)

3. Dockets 32660 and 35635, Petition of the International Air Transport Association for reconsideration of Order 79-9-123. (Memo 9116-A, BIA)

4. Docket 34941, Bahamasair Holdings Limited's application to renew and amend its foreign air carrier permit to operate scheduled services between The Bahamas and eight coterminous U.S. points, including four new U.S. points, subject to conditions and limitations. (Memo 9295, BIA, OGC, BALJ)

5. Dockets 35362, 33542, 33655, 33675, 34090, 34202, 34219, 35571, 35575, 35567, and 35572; New Orleans-Baltimore/Washington Show-Cause Proceeding; Applications for Texas International, Braniff, Northwest, USAir, Continental, Ozark, Western, American, and Republic; petition of the State of Maryland for reconsideration of Order 79-10-20. (Memo 8696-B, BDA)

6. Dockets 35660 and 35847; (Portland-Seattle-Hawaii Show-Cause Proceeding), and (DHL Airways). (Memo 9296, BDA)

7. Dockets 32773, 33026, 33508, 34333, 34349, 34350, and 34465; amendments to various Allegheny Commuter agreements. (Memo 9298, BDA, OGC, BCP)

8. Docket 37042, Application of Swift Aire, commuter air carrier, for exemption to permit it to suspend service at Visalia, California, on less than the 90-days' notice required in connection with joint fares. (Memo 9297, BDA)

9. Dockets 36869, Air Florida's ninety day notice of suspension of all service at St. Croix, U.S. Virgin Islands. (Memo 9299, BDA, OCCR)

10. Docket 36930, United's notice of intent to suspend service in several markets. (BDA)

11. Dockets 36523, 36524, 36616, 36772, 36773, 36774, 36793, 36794, and 36795; USAir's notices to terminate service at Reading, Lancaster, Altoona, Bellefonte/State College, and Johnstown, PA, New London/Groton, CT, Danville, IL, and Terre Haute and Bloomington, IN. (Memo 9300, BDA, OCCR)

12. Docket 35394, Application of Kodiak-Western Alaska Airlines, Inc. and Charles F. Willis III for approval of the acquisition of control of Kodiak by Mr. Willis and the resulting control and interlocking relationships. (Memo 9138-A, BDA, OGC, BCP)

13. Docket 34772, Cancellation of Rule 1(G), CAB No. 352 (formerly CAB No. 142), and similar tariff rules that state that no employees or agents of carriers have authority to waive or modify tariff provisions.

(Memo 8503-A, 8503-B, BDA, BCP, OGC, BIA, OEA)

14. Dockets 31133 and 36595; ATC agreements requiring personal guarantees from spouses and shareholders of certain agents. (Memo 8620-A, BDA, OGC, BCP)

15. Docket 33618, *Robert G. Herriot v. Air New Zealand*, review on petition of BCP dismissal of third-party complaint for unlawful discrimination under Section 404(b) by reservations cancellation. (OGC)

16. Dockets 34241 and 33363, *Application of Air Berlin Charter Company d.b.a. Air Berlin USA and Former Large Irregular Air Service Investigation*. (OGC)

17. Dockets 35301, 35302, and 33363, *Applications of Overseas Military Travel Corporation d.b.a. Militair and Former Large Irregular Air Service Investigation*. (OGC)

18. Dockets 33285, 33286, 33287, and 33363; *Application of Air Fleets International, Inc.: Former Large Irregular Air Service Investigation, Draft Order*. (OGC)

19. Docket 37011, 30-day notice of Munz Northern Airline of intent to terminate subcontract service for Wien at 22 bush points in Alaska. (BDA, OCCR)

20. Dockets 34476, 34477, and 33363; *Applications of R & B Air Travel: Former Large Irregular Air Service Investigation, Order on Discretionary Review*. (OGC)

21. Consumer protections for participants of Super Bowl charters. (OGC)

22. Northwest Alaska Bush Points Christmas Mail Service Exemptions. (OGC)

23. Docket 36068, Air Transport Association petition on behalf of certain member carriers to amend Part 399 of the Board's Policy Statements regarding international passenger fares. (OGC)

24. Discussion on IATA Show Cause Proceeding. (BDA, BIA)

**STATUS:** Open (Items 1-23), Closed (Item 24).

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary (202) 673-5068.

**SUPPLEMENTARY INFORMATION:** Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies relating to the issues could seriously compromise the ability of the United States Delegation to achieve agreements which would be in the best interests of the United States. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that the meeting will be closed:

Chairman, Marvin S. Cohen

Member, Richard J. O'Melia  
Member, Elizabeth E. Bailey

**Persons Expected To Attend**

**Board Members.**—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member Gloria Schaffer.

**Assistants to Board Members.**—Mr. David Kirstein, Mr. James L. Deegan, Mr. Daniel M. Kasper, and Mr. Stephen H. Lachter. **Managing Director.**—Mr. Cressworth Lander. **Executive Assistant to the Managing Director.**—Mr. John R. Hancock.

**Office of the General Director.**—Mr. Michael E. Levine and Mr. Steven A. Rothenberg. **Bureau of International Aviation.**—Mr. Sanford Rederer, Mr. Douglas Leister, Mr. Vance Fort, Mr. Ivars V. Mellups, Mr. Parlen L. McKenna, Mr. Peter H. Rosenow, Mr. Herbert P. Aswall, and Mr. John H. Kiser.

**Bureau of Domestic Aviation.**—Ms. Barbara A. Clark, Mr. Paul L. Gretch, Mr. Paul H. Karlsson, Mr. Charles W. McNagny, Mr. Steven Baron, and Ms. Susan L. Blankenheimer.

**Office of the General Counsel.**—Ms. Mary Schuman, Mr. Gary Edles, and Mr. Peter Schwartzkopf.

**Office of Economic Analysis.**—Mr. Robert H. Frank and Mr. Robert Preece.

**Bureau of Consumer Protection.**—Mr. Reuben B. Robertson and Mr. William H. Wentz.

**Office of the Secretary.**—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Partick.

**General Counsel Certification**

I certify that this meeting may be closed to the public under 5 U.S.C. 552(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting may be closed to the public observation:

Gary Edles,

*Deputy General Counsel.*

[S-2300-78 Filed 11-23-79; 4:32 pm]

BILLING CODE 6320-01-M

3

**COMMODITY FUTURES TRADING COMMISSION.**

**TIME AND DATE:** 11:00 a.m., Friday, December 7, 1979.

**PLACE:** 2083 K Street, N.W., Washington, D.C., 8th floor conference room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance briefing.

**CONTACT PERSON FOR MORE INFORMATION:** Jane Stuckey, 254-6314.

[S-2303 Filed 11-20-79; 11:06 am]

BILLING CODE 6351-01-M

4

**NATIONAL MEDIATION BOARD.**

**TIME AND DATE:** 2:00 p.m., Wednesday, December 5, 1979.

**PLACE:** Board Hearing Room, 8th Floor, 1425 K Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Ratification of Board actions taken by notation voting during the month of November, 1979.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practical time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's Office following the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rowland K. Quinn, Jr., Executive Secretary, telephone (202) 523-5920.

Date of notice: November 28, 1979.

[S-2305-01 Filed 11-28-79; 2:20 pm]

BILLING CODE 7550-01-M

5

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.**

**TIME AND DATE:** November 19, 1979, at 2 p.m.

**PLACE:** Room 1101, 1825 K Street, N.W., Washington, D.C.

**STATUS:** Because of the subject matter, this meeting was closed.

**MATTERS TO BE CONSIDERED:** Internal personnel rules and practices.

**CONTACT PERSON FOR MORE INFORMATION:** Mrs. Patricia Bausell (202) 634-4015.

Dated: November 26, 1979.

[S-2304-79 Filed 11-28-79; 1:52 pm]

BILLING CODE 7600-01-M

6

**POSTAL SERVICE.**

The Committee on Audit of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 2:00 p.m. on Monday, December 3, 1979, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza S.W., Washington, D.C. 20260. The meeting is open to the public. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

The Committee will review with representatives of the Postal Service's, outside auditors the Postal Service's Balance Sheet and Financial Statements for FY 1979.

This Committee meeting is to be held in anticipation of a meeting of the Board of Governors which is scheduled to commence at 9:00 a.m. on December 4, 1979. A report of the Committee is on the agenda for the Board meeting.

Louis A. Cox,

*Secretary.*

[S-2301-01 Filed 11-28-79; 9:45 am]

BILLING CODE 7710-12-M

7

**POSTAL SERVICE.**

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9:00 a.m. on Tuesday, December 4, 1979, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. Except as indicated in the following paragraphs, the meeting is open to the public. The Board expects to discuss the matters stated on the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

On November 6, 1979, the Board of Governors of the United States Postal Service voted to close to public observation a portion of the December 4, 1979, meeting. Each of the members of the Board voted in favor of partially closing the meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Allen, Camp, Ching, Robertson and Sullivan; Postmaster General Bolger; Deputy Postmaster General Conway; Senior Assistant Postmaster General Finch and Secretary to the Board Cox.

The portion of the meeting to be closed will consist of a discussion of the Postal Service's possible strategies concerning future postal ratemaking.

**Agenda**

1. Minutes of the Previous Meeting.  
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Adjusting Reduced Third-Class Rates for Certain Political Committee Mailings. (The Governors will consider an adjustment under

39 U.S.C. § 3627 for bulk third-class mailings of qualified political committees in the light of a proviso in the Postal Service Appropriation Act, 1980 (Public Law 96-74) stating that no funds appropriated by that Act shall be available for implementing special bulk third-class rates for qualified political committees other than those of a major or minor party as defined in the Presidential Election Campaign Fund Act (26 U.S. § 9002.)

4. Report of the Audit Committee on FY 1979 Financial Statement. (Mr. Sullivan, as Chairman of the Audit Committee of the Board, will report to the members on the meeting of the Audit Committee (which is to be held on December 3, 1979) with representatives of the Postal Service's outside auditors concerning the Service's Balance Sheet and Financial Statements for FY 1979.)

5. Review of the Postal Service Budget Program. (Mr. Finch, Senior Assistant Postmaster General for Finance will present the Postal Service's budget for FY 1981 as it is proposed for transmission to the OMB and the Congress.)

6. Review of the Annual Comprehensive Statement to the Congress. (Public Law 94-421 amended 39 U.S.C. § 2401 to require the Postal Service to present a "Comprehensive Statement" to the Legislative and Appropriations Committee of the Congress having cognizance over postal matters. The Comprehensive Statement is to be presented concurrently with the Service's annual budget submission. The Comprehensive Statement is to describe the plans, policies, and procedures of the Postal Service designed to comply with the policies of the Postal Reorganization Act; postal operations generally; and financial summaries and projections. The Comprehensive Statement is on the Board's agenda because approval of the annual Comprehensive Statement is included in the list of matters that the Board has reserved for its own decision. Mr. Horgan, Assistant Postmaster General for Government Relations will present a draft of the Statement.)

7. Proposed Capital Investment Project: New General Mail Facility for Santa Ana, California. (Mr. Morris, Regional Postmaster General for the Western Region, will present a proposed project for the construction of a new General Mail Facility in Santa Ana, California.)

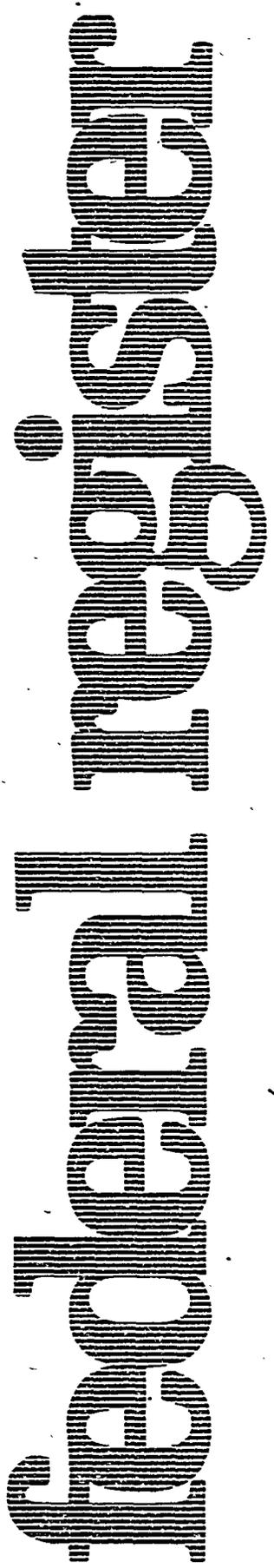
8. Discussion of Postal Service Ratemaking Strategy. (The Board will discuss Postal Service ratemaking plans. As stated above in the Notice of Meeting, the part of the meeting that will be devoted to this matter will be closed to the public.)

Louis A. Cox,  
Secretary.

[S-2302-79 Filed 11-28-79; 9:45 am]

BILLING CODE 7710-12-M





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Wednesday  
November 28, 1979

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**Part II**

**Department of  
Energy**

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**Office of Conservation and Solar Energy**

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**Energy Performance Standards for New  
Buildings; Proposed Rule**

**DEPARTMENT OF ENERGY**

**Office of Conservation and Solar Energy**

**10 CFR Part 435**

**Energy Performance Standards for New Buildings; Proposed Rulemaking and Public Hearings**

**AGENCY:** Department of Energy.

**ACTION:** Proposed rulemaking; notice of public hearings.

**SUMMARY:** The Department of Energy proposes to establish energy performance standards for new buildings to achieve the maximum-practicable improvements in energy efficiency and increases in the use of renewable sources of energy. The standards will apply to the designs of new residential and commercial buildings.

The proposed standards consist of three fundamental elements:

- Energy Budget Levels for different classifications of buildings in different climates, expressed as an annual rate of energy consumption.
- A method for applying these Energy Budget Levels to a specified building design to obtain a specific annual rate of energy consumption, which is its Design Energy Budget.
- A method for calculating the estimated annual rate of energy consumption of a building design, which is referred to as its Design Energy Consumption.

The proposed rule requires that the Design Energy Consumption of a building design for a new building may not exceed its Design Energy Budget.

States and local governments will be encouraged to adopt, enforce, and implement the energy performance standards through their existing building codes, other construction control mechanisms, or an alternate approval process. Although such implementation is discussed in the preamble to this proposed rule, an implementation methodology is not formally proposed.

The Department anticipates that, after the final rule is promulgated, the standards will be revised periodically to reflect advances in energy conservation and renewable energy technologies, changes in energy prices and supplies, and knowledge gained from experience in administering the standards.

**DATES:** Written comments on this proposed rule and the Technical Support Documents, including the Draft Environmental Impact Statement, must be received by the Department on or before February 26, 1980. Five public

hearings will be held, on the dates given in the table.

**ADDRESSES:** The hearings will begin at 9:30 a.m., local time. The hearings will be conducted as stated in Section 7.0 of the preamble to this proposed rule. The locations of the hearings are given in the table. Written comments and requests to speak at the hearings, as well as questions regarding the conduct of the

hearings, should be directed to Joanne Bakos.

Interested persons are invited to participate in this rulemaking by submitting data, views, and comments to Joanne Bakos, Office of Conservation and Solar Energy, Department of Energy, Docket Number CAS-RM-79-112, Mail Station 2221C, 20 Massachusetts Avenue, NW., Washington, D.C. 20585.

City	Hearing date	Location	Requests to speak to be submitted by	Speakers selected notified by
Washington, D.C.	Jan. 28, 29, 30, 1980.	Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, Md.	Jan. 16, 1980	Jan. 23, 1980.
Atlanta, Ga.	Feb. 4, 5, 6, 1980.	Atlanta Civic Center, 395 Piedmont Ave., N.E., Atlanta, Ga. 30308.	Jan. 16, 1980	Jan. 23, 1980.
Kansas City, Mo.	Feb. 4, 5, 6, 1980.	Holiday Inn, 1301 Wyandotte St., Kansas City, Mo. 64105.	Jan. 16, 1980	Jan. 23, 1980.
Los Angeles, Calif.	Feb. 11, 12, 13, 1980.	Holiday Inn, Convention Center, 1020 South Figueroa St., Los Angeles, Calif. 90015.	Jan. 16, 1980	Jan. 23, 1980.
Boston, Mass.	Feb. 11, 12, 13, 1980.	J. W. McCormack, Post Office and Court-house Building, Post Office Square, Boston, Mass. 02102.	Jan. 16, 1980	Jan. 23, 1980.

**FOR FURTHER INFORMATION CONTACT:**

James L. Binkley, AIA (Buildings and Community Systems), U.S. Department of Energy, Office of Conservation and Solar Energy, Mail Station 2114C, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (800) 424-9040 (Continental U.S.), (800) 424-9081 (Alaska, Hawaii, territories and possessions), (202) 252-2855 (Washington, D.C.).

Joanne Bakos (Hearing Procedures), U.S. Department of Energy, Office of Conservation and Solar Energy, Mail Station 2221C, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376-1651.

Richard F. Kessler (Office of General Counsel), U.S. Department of Energy, Mail Station 3228, 20 Massachusetts Ave., NW., Washington, D.C. 20585, (202) 376-4543.

**SUPPLEMENTARY INFORMATION:** The following table of contents details the organization of this Notice of Proposed Rulemaking.

**Table of Contents**

*Technical Support Documents*

- 1.0 The Standards Program
- 2.0 The Research Effort
- 3.0 Selection of the Proposed Energy Budget Levels
- 4.0 Building Design Evaluation Techniques
- 5.0 Implementation
- 6.0 Other Matters
- 7.0 Opportunities for Public Comments
- 8.0 A Guide to the Proposed Rule

**The Proposed Rule**

**Technical Support Documents**

In support of this proposed rule, the Department has developed ten Technical Support Documents. These

documents provide detailed information on important aspects of the proposed rule and are referred to throughout the preamble. The Draft Environmental Impact Statement (Technical Support Document No. 7) will be available at the time of publication of this proposed rule in the Federal Register. The other documents will be available on or before December 19, 1979. All documents may be obtained at the addresses given below.

Number	Title	Administrative record number
1	The Standard Evaluation Technique.	9581.00
2	Statistical Analysis	9582.00
3	Energy Budget Levels Selection	9563.00
4	Weighting Factors	9584.00
5	Standard Building Operating Conditions.	9585.00
6	Draft Regulatory Analysis.	9568.00
7	Draft Environmental Impact Statement.	9567.00
8	Economic Analysis	9569.00
9	Passive and Active Solar Heating Analysis.	9569.00
10	Climate Classification Analysis.	9670.00

Copies of the proposed rule and all of the Technical Support Documents, as well as other documents specifically identified in this proposed rule, may be obtained from and will be available for public review under Docket No. CAS-RM-79-112 in the following Offices, between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday, except Federal holidays:

- Department of Energy, Freedom of Information Officer, 150 Causeway Street, Boston, MA 02114, (617) 223-5207.
- Department of Energy 26 Federal Plaza, Room 3200, New York, NY 10007, (212) 264-4780.
- Department of Energy, 1421 Cherry Street, 10th Floor, Philadelphia, PA 19102, (215) 597-9067.
- Department of Energy, 1655 Peachtree Street, NE., Atlanta, GA 30309, (404) 881-2696.
- Department of Energy, 175 West Jackson Blvd., Room A333, Chicago, IL 60604, (312) 886-5170.
- Chicago Operations & Regional Office, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972-2002.
- Department of Energy, P.O. Box 35228, Dallas, TX 75235, (214) 767-7701.
- Department of Energy, 324 East 11th Street, Kansas City, MO 64106, (816) 374-5182.
- Department of Energy, 1075 South Yukon Street, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226, (303) 234-2420.
- Department of Energy, 111 Pine Street, 3rd Floor, San Francisco, CA 94111, (415) 556-7216.
- Department of Energy, 1992 Federal Building, 915 Second Avenue, Seattle, WA 98174, (206) 442-7303.
- Department of Energy, Freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 252-5953.
- Department of Energy, Albuquerque Operations Office, Albuquerque, New Mexico, Attn: National Atomic Museum, Public Document Room, P.O. Box 5400, (505) 234-6938.
- Chicago Operations & Regional Office, 175 West Jackson Blvd., Chicago, IL 60604, Attn: Freedom of Information Office, Room A-136, (312) 353-5769.
- Department of Energy, Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401 Attn: R. L. Blackledge, Assistant to Mgr. for Public Affairs, (208) 526-1317.
- Morgantown Energy Tech. Center, P.O. Box 880, Morgantown, W.V. 26505, Attn: Dorothy Simon, Librarian, (304) 599-7184.

Single copies of the documents may also be obtained by contacting James L. Binkley at the address given previously.

The Draft Environmental Impact Statement only will also be available at the following offices, in addition to those previously listed:

- Department of Energy, Nevada Operations Office, Director, Office of Public Affairs, P.O. Box 14100, Las Vegas, NV 89114.
- Department of Energy, Oak Ridge Operations Office, P.O. Box E, Public Document Room, Oakridge, TN 37830.
- Department of Energy, Hanford Science Center, 825 Jaswin Avenue, Richland, WA 99352.

## 1.0 The Standards Program

### 1.1 Introduction

The Department of Energy (DOE) today proposes to amend Chapter II of

Title 10, Code of Federal Regulations, to establish energy performance standards for new commercial and residential buildings. In August of 1976, in response to the need to encourage in new buildings greater conservation of depletable energy resources and the increased use of renewable energy resources, Congress passed the Energy Conservation Standards for New Buildings Act of 1976 (42 U.S.C. 6831-6840) (the Act). The Act mandated the development, promulgation, implementation and administration of energy performance standards for new buildings (the Standards). This proposed rule has been prepared by DOE in direct response to Section 304 of the Act, which calls for the development and promulgation of the Standards.

Responsibility for the development and promulgation of the energy performance standards was transferred from the Department of Housing and Urban Development (HUD) to DOE by Section 304(a), 42 U.S.C. 7154(a), of the Department of Energy Organization Act, Pub. L. 95-91, 42 U.S.C. 7101 *et seq.*

The proposed rule and this preamble are presented in a manner that DOE hopes will be easily understood by those who will be expected to comply with, or who may be affected by, the final rule, including: The general public; consumer, environmental, and public interest groups; the real estate community; State and local governments; public and private utilities; design professionals; builders; building product manufacturers; and others concerned with buildings.

This Notice of Proposed Rulemaking is presented in two parts: the preamble, and the proposed rule. The proposed rule, which includes four Appendices and three subparts, is presented at the end of this issuance, following the preamble.

The preamble, of which this section is a part, describes the Standards program and the contents of the proposed rule (Section 1.0); presents in summary form a description of the program conducted to develop the proposed rule (Sections 2.0 through 4.0); discusses issues surrounding implementation of the Standards (Section 5.0); summarizes the draft Regulatory Analysis proposed by DOE (Section 6.0); gives the procedures to be followed for public comment on the Standards and for the public hearings on the proposed rule (Section 7.0); and finally, gives an illustration of how the proposed rule could be applied to a building design process (Section 8.0).

### 1.1.1 Summary

Congress determined that significant amounts of energy were unnecessarily consumed for space conditioning and domestic hot water in newly constructed residential and commercial buildings, because such buildings lacked adequate energy conservation features. (Section 302(a) of the Act.)

To respond to this problem, Congress directed the development and promulgation of Standards for "new residential and commercial buildings which are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy." (Section 302(2)).

Such standards will reduce energy waste in new buildings, a major energy-using sector of the Nation's economy. Estimates show that buildings currently use about one-third of the total U.S. energy consumption. Research, outlined in Section 2.0 of this preamble, affirms the Congressional finding that major opportunities exist to reduce this energy consumption, while realizing significant savings in operating costs to building owners and users.

This reduction is expected to result from accelerated investments in energy conservation in buildings over and above what would result from market forces alone. For example, single-family residential buildings designed to comply with the proposed Standards might use between 22% and 51% less energy than current practice<sup>1</sup>; and commercial and multifamily residential buildings might use between 17% and 52% less energy, depending on the type of building and the climate.<sup>2</sup>

DOE's initial analyses also show that the proposed Standards will result in greater conservation than existing building standards, as well as recently revised standards such as a draft version (April 1978) of the Department of Housing and Urban Development (HUD) Minimum Property Standards<sup>3</sup> and the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) proposed Standard 90-75R (November 1977).<sup>4</sup>

<sup>1</sup> Technical Support Document No. 8, Economic Analysis.

<sup>2</sup> Average reductions for building types derived from Brown Associates, Inc., "Budget Percentiles for Baseline and Redesign Commercial Type Buildings for Cities with TRY Weather Tapes" (Sept. 1979).

<sup>3</sup> Research on the HUD Minimum Property Standards is discussed in Technical Support Document No. 8, Economic Analysis.

<sup>4</sup> Research on ASHRAE 90-75R is discussed in a memorandum to DOE from AIA Research Corporation, "Preliminary Results of Potential Improvements to ASHRAE 90-75R to Determine Possible Equivalence to the Mean of the Phase-2 Redesign Buildings" (August 30, 1979).

As mentioned, significant savings are expected for building owners and users. Studies assessing the probable costs and benefits to individuals show that the total cost of owning and operating a building designed in compliance with the proposed Standards (i.e., the capital cost of the building and the energy costs for heating, cooling, ventilation, lights, vertical transportation, and domestic hot water will decrease compared to current practice (Technical Support Document No. 8, Economic Analysis)).

### 1.1.2 Summary Description of the Proposed Standards.

The Act calls upon DOE to develop Standards for new buildings which are to be implemented at the State and local level through building codes. The Act defines Standards to mean:

"an energy consumption goal or goals to be met without specification of the methods, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary." (Section 303(9) of the Act)

A building is defined in Section 303(2) of the Act as " \* \* \* any structure to be constructed which includes provision for a heating or cooling system, or both, or for a hot water system."

The proposed Standards are applied during the design of a building and regulate its design energy conservation potential. They do not regulate the operation, maintenance or energy consumption of the building once built. The Standards thus take advantage of the great opportunity to save energy and to increase the use of renewable resources by requiring that buildings be designed to be energy efficient. The efficient operation and maintenance of the resulting energy-efficient buildings provides an opportunity to save even more energy.

The proposed Standards regulate the design of a whole building rather than prescribing requirements for its individual parts. This approach is markedly different from existing component performance standards, which specify the minimum energy-related performance of a building's parts, components or subsystems. Component-based standards do not consider that the same set of building components, assembled in different ways, can result in varying levels of design energy consumption for the whole building. Whole building performance standards take this into account by permitting a designer to meet an overall energy goal for a building by considering not only the efficiencies of parts of the building but also the

tradeoffs among building components or among alternate overall design strategies.

The proposed Standards do not specify the methods, materials or processes used to meet the energy goals. As such, they can accommodate changes in design and technology over time.

The proposed Standards do not regulate only heat gain and heat loss through a building's skin. Instead, they set energy limits for the building as a whole. This includes projected combined energy use of specific energy using systems in a building such as the heating, cooling, lighting and domestic hot water systems.

The proposed Standards consist of three elements. First, Energy Budget Levels must be set for different classifications of buildings<sup>5</sup> in different climates.<sup>6</sup> The Energy Budget Levels are stated in terms of thousands of British thermal units per square foot of gross area of the building design per year (MBtu/sq. ft./yr).

Second, the proposed Standards provide the method for applying the Energy Budget Levels to a specific building design to obtain an annual rate of energy consumption, which is its Design Energy Budget. This method covers (1) buildings that have only one primary function, and (2) multifunctional buildings.

Third, the proposed Standards establish a method for calculating the estimated annual rate of energy consumption of a building design, which is referred to as its Design Energy Consumption. Accordingly, the Standards can be reduced to the simple design requirement that the Design Energy Consumption of a new building design may not exceed its Design Energy Budget.

Section 1.4 of this preamble describes in more detail the contents of each section of the proposed Standards, and Section 8.0 gives an example of how the proposed Standards might be used in a typical building design process.

<sup>5</sup> The classifications of building designs are given in the proposed rule. It should be noted that goals are not provided for three classifications, restaurants, industrial buildings, and mobile homes, at this time. These three classifications are all published "space reserved" for this proposed rule, pending the outcome of further research. Also, it should be noted that mobile homes are currently regulated under the provisions of the HUD Mobile Home Construction and Safety Standards and that, once the performance Standards are final, the HUD standards will be modified for compliance with the performance Standards.

<sup>6</sup> The climate conditions are included in the proposed Standards in response to the requirement that they " \* \* \* take account of \* \* \* climate variations among the different regions of the country." (Section 304(b) of the Act).

### 1.1.3 Summary Description of the Standards Program

The Standards program is comprised of both the development of the Standards and their implementation. The development of the Standards is dealt with in this proposed rule.

The implementation of the Standards, which is the second part of the program, is not formally proposed in this NOPR. However, issues surrounding implementation are discussed in Section 5.0. Implementation will center on the concept that States and local governments will be encouraged "to adopt and enforce such standards through their existing building codes and other construction control mechanisms, or to apply them through a special approval process." (Section 302(b)(3) of the Act)

### 1.2 Advance Notice of Proposed Rulemaking

The effort to develop the proposed Standards has included an Advance Notice of Proposed Rulemaking (ANOPR), published in the Federal Register on November 21, 1978, and three public meetings, held in December 1978 in Washington, D.C., Chicago, IL and San Francisco, CA. Thirty-four individuals testified at the public meetings and 188 written comments were submitted. The purpose of the ANOPR and the public meetings was to solicit public comment on the status of the development program and a number of issues unresolved at that time. The comments received were central in shaping the additional research that followed the ANOPR, as well as the form and presentation of this Notice of Proposed Rulemaking (NOPR). Public comment is also requested on this proposed rule, and the comments received within the specified comment period will be considered in the formulation of the final rule.

### 1.3 Elements of the Proposed Rule

The proposed rule has three major subparts. Subpart A, "The Performance Standards," is presented in detail. Subpart B, "Implementation," and Subpart C, "Administrative Review," are to be published in the future. This means that these subparts are still being developed, but are expected to become part of the final rule.

The proposed rule also has four Appendices. Appendix I, "Energy Budget Level Tables," contains the proposed Energy Budget Levels for single-family residential, commercial and multifamily residential buildings for identified building classifications and for various geographic locations.

Appendix II, "Climate Tables," sets forth the procedures for selecting the climate conditions applicable for locations not included in the tables in Appendix I.

Appendix III, "Approved Alternate Evaluation Techniques," and Appendix IV, "Model Codes and Standards," are expected to be published in the final rule.

The following discussion is intended to serve as a guide to understanding these elements of the proposed rule and is organized in the same manner as the proposed rule.

#### 1.4 Content of the Proposed Rule

Subpart A, "The Performance Standards," has six sections, as described below.

##### 1.4.1 Purpose and Scope (§ 435.01)

This section of the proposed rule describes why the Standards are being proposed, gives a brief explanation of their nature and indicates what the Standards are generally expected to accomplish. For the most part, this is a direct response to language contained in the Act.

##### 1.4.2 Definitions (§ 435.02)

This section of the proposed rule defines terminology used throughout the proposed rule and is crucial to its proper interpretation. Some of the terms used are widely recognized by the building industry, but are given precise meaning for their use in the proposed rule.

##### 1.4.3 Requirements for the Performance Standards (§ 435.03)

This section of the proposed rule sets forth the design requirements of the Standards and the method for determining whether a building design complies with the Standards. Simply stated, the Design Energy Consumption of a new building must not exceed the Design Energy Budget for that building type in its applicable climate area. This requirement is the essence of the proposed rule.

The proposed Energy Budget Levels are displayed in Appendix I. The research program that was used as the basis for selecting the proposed Energy Budget Levels is described in Section 2.0 of the preamble. The reasons for this are described in Section 3.0.

##### 1.4.4 Building Design and Building Function Classifications (§ 435.04)

This section of the proposed rule provides detailed definitions of the building design and building function classifications covered by the proposed Standards. As such, the section provides guidance in determining the applicable

Design Energy Budget for a given building design and is the first major element used in that determination. The procedure used to develop the building classifications is described in Section 2.4.3 of the preamble.

##### 1.4.5 Selection of Applicable Climate Conditions (§ 435.05)

This section of the proposed rule outlines a procedure whereby a proposed building design may be related to any location in the United States, either by proximity or by similarity in weather characteristics, to one or more of the 78 Standard Metropolitan Statistical Areas (SMSA's) and cities. It refers to Appendix II, which provides climate data for the 78 SMSA's and cities. It also sets forth procedures for selecting applicable climate conditions in localities outside those listed. This section is the second major element used to determine the applicable Design Energy Budget for a given building design and is discussed at greater length in Section 2.4.5 of the preamble. An extensive review of DOE's research concerning the relationship between Climate and Design Energy Consumption is presented in Technical Support Document No. 10, Climate Classification Analysis.

##### 1.4.6 Procedure for Establishing Alternate Evaluation Techniques (§ 435.06)

This section of the proposed rule establishes a procedure whereby a calculation method other than the Standard Evaluation Technique can be submitted for consideration as an approved alternate. The procedure requires the submission of data and information for review and evaluation.

A discussion of evaluation techniques is provided in Section 4.0 of the preamble. A comprehensive overview of energy calculation methods in general, and the Standard Evaluation Technique in particular, is provided in Technical Support Document No. 1, The Standard Evaluation Technique.

##### 1.4.7 Subpart C, Administrative Review

Subpart C, "Administrative Review," is expected to provide a procedure for administrative interpretations of and exceptions to the Standards. It is expected to include exceptions procedures for designs involving:

- Special health and safety requirements or considerations.
- Unique climate conditions.
- Difficult problems in calculating Design Energy Consumption.
- Unique building classifications.

- Other matters or concerns, as determined by DOE.

#### 1.5 Updating the Standards

As required by Section 304(c) of the Act, "The Secretary \* \* \* shall periodically review and provide for the updating of [the] Standards."

DOE has considered two approaches for updating the Standards. The first is to provide for a review of the Standards for possible updating at periodic intervals (perhaps every three to five years). The other alternative is to propose a long-term plan with Energy Budget Levels defined for a period of 10 years or more. Such a long-term schedule could provide a degree of certainty, as well as more lead time for the building industry. If technical or economic circumstances dictate, such a long-term schedule could be revised.

DOE would like to receive comments on whether periodic updating or predetermined Energy Budget Levels is preferable.

#### 1.6 Monitoring the Standards

Sections 311 (1), (2) and (3) of the Act require the Secretary to " \* \* \* monitor the progress made by the States \* \* \*," to " \* \* \* identify any procedural obstacles or technical constraints inhibiting implementation \* \* \*," and to " \* \* \* evaluate the effectiveness \* \* \*" of the Standards. In addition to answering these requirements, a monitoring plan may respond to such questions as:

- How can the accomplishments and costs of the regulation or program be measured?
- What kinds of information are required to measure program costs and benefits and how can this information be collected?

The following measures may be used to evaluate the accomplishments and costs of the Standards:

- The extent of compliance as measured by the percentage of newly constructed buildings complying with the Standards.
- The amount of energy saved, expressed by fuel type, in Btu's and in dollars, due to the Standards. This will be accomplished by the use of national surveys of the design and actual energy consumption of a stratified sample of pre-Standards construction and a similar sample of post-Standards construction. Comparisons of the difference in energy consumption by building type will indicate the difference the Standards have had, and the results will be aggregated to allow for the calculation of the national energy savings.

• The extent of additional cost due to compliance with the Standards, including user costs, design costs, building construction costs, State and local certification costs, and costs incurred to satisfy any alternate approval process.

• The cost per unit of energy saved, using the data referred to above.

DOE will coordinate data collection with the Energy Information Agency (EIA) and obtain energy consumption information from EIA's national residential and nonresidential building surveys by building type. The latest pre-Standards survey information will be compared to the initial post-Standards survey.

DOE would like to receive comments on its proposed monitoring plan.

### 1.7 Summary

The above section provides an overview of the Standards program and the elements of the proposed rule. Section 2.0, which follows, details the research activities conducted in support of the program, in order to develop an information base from which DOE could determine not only the proposed Energy Budget Levels, but also the most appropriate structure and unit of measure for presenting the Standards.

### 2.0 The Research Effort

In developing the proposed rule, DOE conducted analyses of building designs relative to energy efficiency, stimulation of the use or renewable resources, building functions and operating conditions, environmental impacts, institutional resources, habitability, economic cost and benefit, and impacts on affected groups.

When the Act was passed, there was little information available on the Design Energy Consumption of buildings and thus limited technical information on which to establish Energy Budget Levels. Furthermore, there was little information on the economic, environmental, or regulatory impacts of requiring that new buildings be designed to use less energy than current practice. In order to establish reasonable Energy Budget Levels, this information had to be developed. The research program addressed these issues.

The research effort was both extensive and complex. It consisted of concurrent research activities in a number of areas, over more than a two-year period, with many of the research activities exploring new issues.

The following is a guide to the contents of this section:

#### 2.1 Introduction

##### 2.1.1 Organization of the Research

##### 2.1.2 Research Chronology

#### 2.2 Research to Develop Energy Budget Levels

##### 2.2.1 Commercial and Multifamily Residential Buildings

##### 2.2.2 Single-Family Residences

##### 2.2.3 Mobile Homes

#### 2.3 Additional Research Affecting Energy Budget Levels

##### 2.3.1 Environmental Issues

##### 2.3.2 Commercial and Multifamily Residential Buildings

##### 2.3.3 Single-Family Residences

#### 2.4 Research Affecting the Format of the Energy Budget Levels

##### 2.4.1 Weighting Factors

##### 2.4.2 Renewable Sources of Energy

##### 2.4.3 Building Design Classifications

##### 2.4.4 Standard Building Operating Conditions

##### 2.4.5 Climate

##### 2.4.6 Unit of Measure

### 2.1 Introduction

This section provides a general description of the information upon which DOE based this proposed rule. The introduction describes the research program and its chronology.

The research program pursued two general directions: (1) It provides an information base for determining appropriate Energy Budget Levels; and (2) it develops a structure and unit of measure for the proposed Standards, to reflect the fuels used, expected types of building uses, building operating conditions, and climate variations.

#### 2.1.1 Organization of the Research

During the development of the information base, the organizational structure of the program shifted considerably, because of the changes in DOE and HUD responsibilities over time, and because of the shift in emphasis of the research program from strictly an energy analysis to an energy, economic, environmental and regulatory analysis.

The structure of the initial research effort is shown in Figure 2.1. The initial research program was directed by HUD (Box 1). The HUD effort was coordinated with the U.S. Energy Research and Development Administration, a predecessor of DOE (Box 2). Under HUD's direction, The American Institute of Architects, AIA Research Corporation (AIA/RC) (Box 4) managed the research program. A technical Advisory Group (TAG) (Box 3) to AIA/RC provided general technical advice in key areas. An Educational Advisory Group provided advice on the structuring of certain elements of the buildings design experiments (Box 5).<sup>7</sup>

<sup>7</sup>The major research activities included building surveys, statistical studies, building design experiments, data collection, data processing, building classification studies, design contract

The current organization and management of the research program is shown in Figure 2-2. The program is managed by DOE (Box 1) in coordination with other Federal agencies (Box 2).

The initial research program is continuing, with a focus on life-cycle cost studies on commercial buildings and mobile homes, an analysis of competent performance standards, climate analysis, building function analysis, statistical analysis and data analysis (Box 3). DOE is also undertaking new research which includes economic analysis, environmental analysis, life-cycle cost studies for single-family residences, building classification analysis, weighting factor analysis, development of an evaluation technique and preparation of a regulatory analysis (Boxes 4 and 5).<sup>8</sup>

#### 2.1.2 Research Chronology

The research program to date has been conducted in three phases (see Figure 2-3). Phases 1 and 2, conducted in 1977 through mid-1978, focused on the development of an energy information base for current building design. Research in the third phase includes energy, economic and environmental studies.

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administration and climate classification studies (Box 6). Major subcontractors to AIA/RC included: Syska & Hennessey, Inc., and S&H Information Systems, Inc., for data collection, analysis and processing for commercial and multifamily residential buildings; The Ehrenkrantz Group, Inc., for building classification and code studies; Brown Associates, Inc., for sample design and statistical analysis; the National Association of Home Builders Research Foundation (NAHB/RF), for residential data collection, analysis and processing; T. R. Arnold & Associates, for mobile home data analysis and processing; Stephen Winters Associates, for mobile home cost analysis; DTM, Inc., for statistical analysis; Heery & Heery, Inc., for design contract administration; Bickle-Clay, Inc., for comparative analysis of computer program results; Ayres Associates, for comparative analysis of computer program results; Duke University Center for the Study of Energy Conservation, for comparative analysis of results of computer and manual calculation results; and R&D Associates, Inc., for climate analysis.

<sup>8</sup>The major contracts have been further architectural and engineering research activities, supported by most of the same general subcontractors as in the initial period, plus: Hanscomb Associates, Inc., for commercial life-cycle cost studies; Reynolds, Smith and Hills, for mobile home life-cycle cost studies; IDC, Inc., for building function analysis; and with continuing advice from the TAG, Battelle Pacific Northwest Laboratory and Brookhaven National Laboratory are managing and conducting major economic, environmental, life-cycle cost and related analyses, with assistance from Lawrence Berkeley Laboratory, Los Alamos Scientific Laboratory, and Oak Ridge National Laboratory. OAO Corporation is providing program support and conducting a Regulatory Analysis, with assistance from Thomas Vonier Associates, Inc.

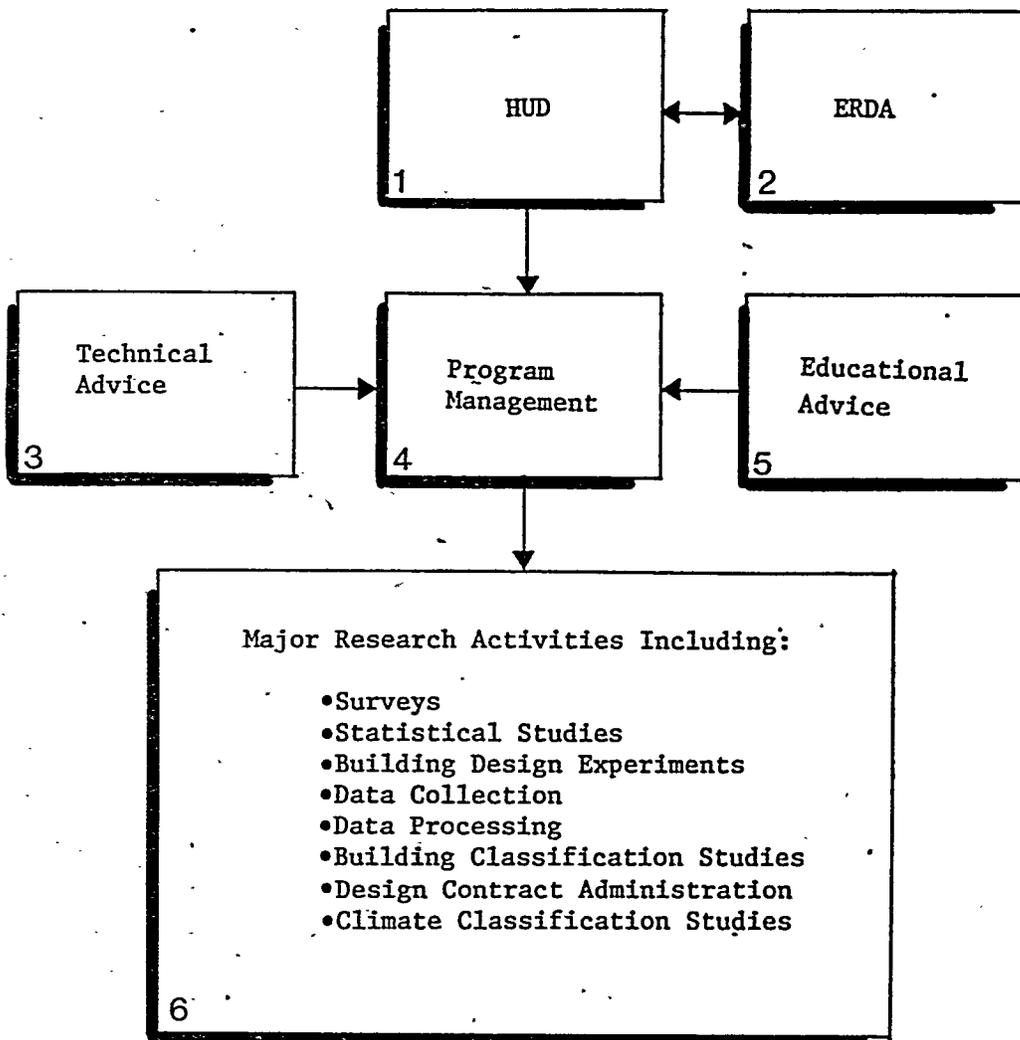
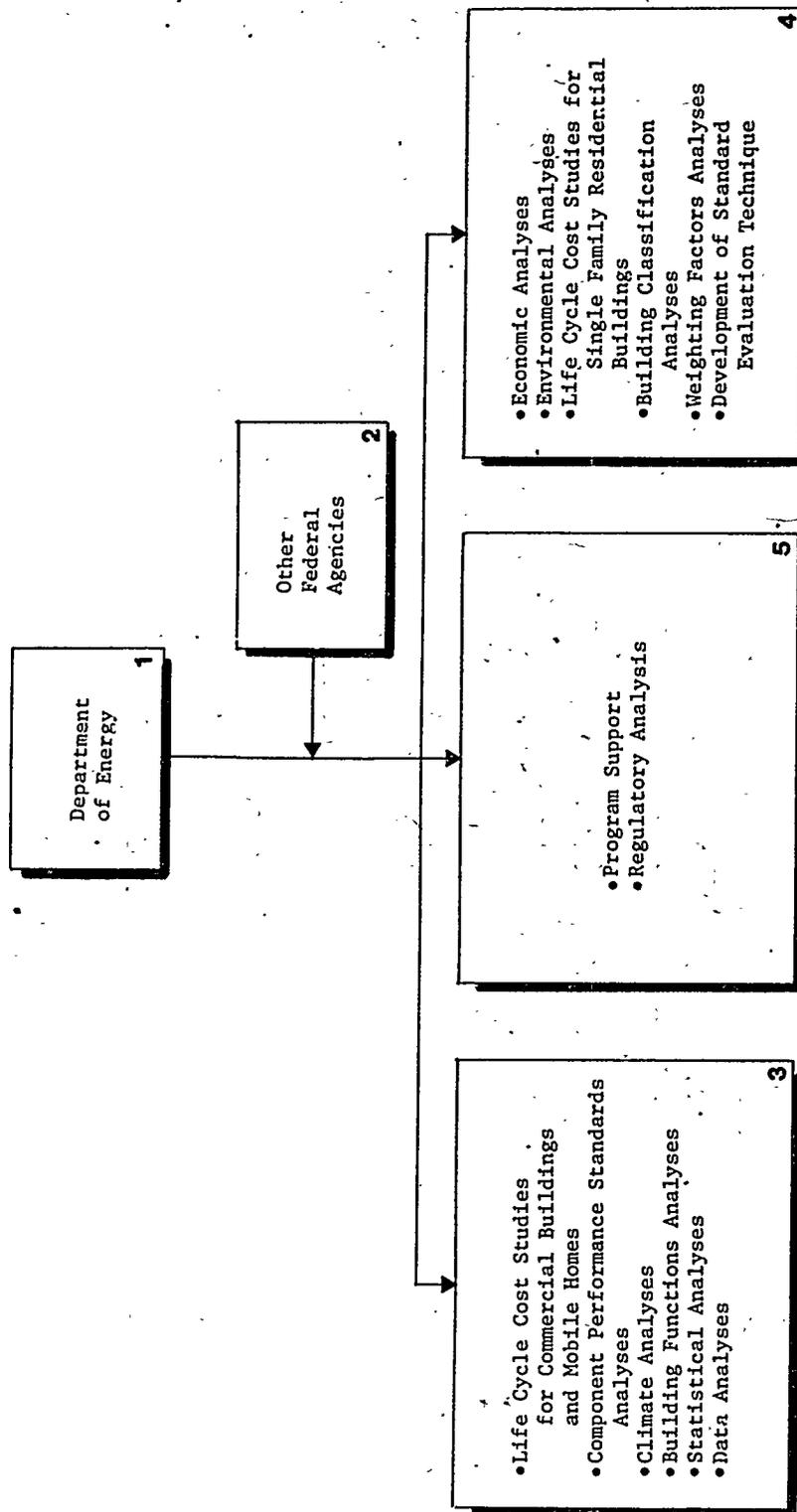


FIGURE 2-1: ORGANIZATION - PHASES 1 AND 2

FIGURE 2-2: CURRENT ORGANIZATION



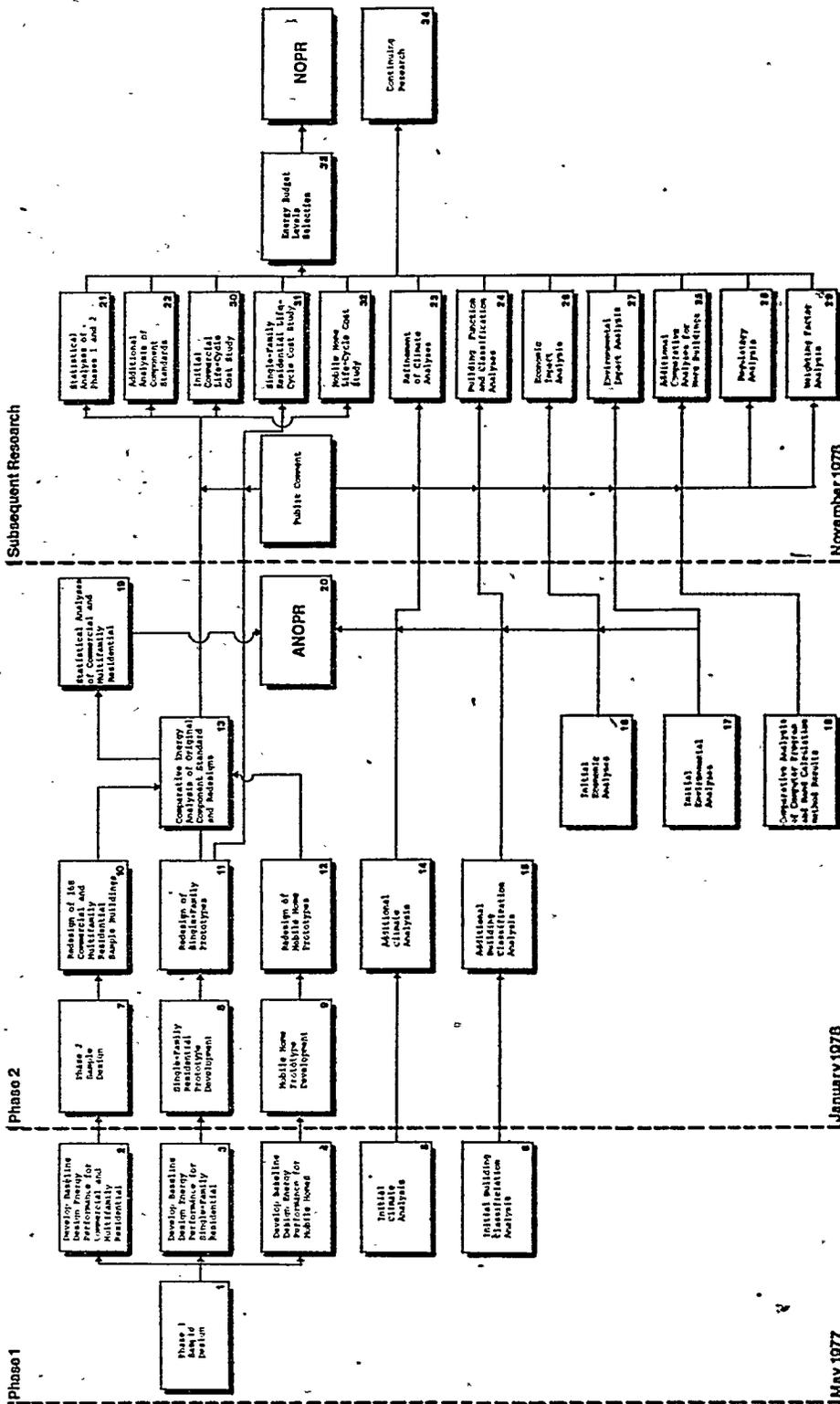


FIGURE 2-3: THE RESEARCH PROGRAM

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To provide a baseline of current building design practice, Phase 1 consisted of surveying and analyzing samples of commercial (Box 1), multifamily residential (Box 2), and single-family residential buildings (Box 3), and mobile homes (Box 4) for which construction began before the end of 1976. Such buildings represented the first generation of buildings designed after the 1973 oil embargo. Therefore, DOE concluded that their designs reflected greater concern for energy conservation in comparison with buildings designed prior to 1973. Phase 1 also included the first climate analysis (Box 5) and building classification analysis (Box 6) of the research program.

Phase 2 consisted of more detailed energy analyses of a sub-sample of the Phase 1 buildings (Box 7), or of prototype buildings (Boxes 8 and 9) derived from the Phase 1 sample. Redesign efforts were conducted for each major building category (commercial and multifamily residential, single-family residential and mobile home), and estimates of design energy requirements<sup>9</sup> were developed by building type (Box 13):

1. As originally designed for construction in 1975-1976.
2. As modified to conform to the minimum component performance requirements of existing energy standards and guidelines.

<sup>9</sup>The design energy analyses in Phases 1 and 2 weighted each fuel used in terms of building site values. Design energy estimates at the site boundary are referred to throughout as design energy requirements, to distinguish them from Design Energy Budget and Design Energy Consumption estimates, which include weighting factors that reflect the value to the Nation of providing different kinds of fuel to a building site. This is discussed in Section 2.4.1 of this preamble.

The design energy requirements for commercial and multifamily residential buildings include energy for heating, cooling, ventilation, exhaust fans, artificial lighting, domestic hot water, and elevators and escalators. For single-family buildings, the design energy requirements include energy for heating, cooling and domestic hot water.

Other potential energy consuming systems or devices associated with the activities within a building are not necessary for maintaining comfort conditions for human occupancy, nor for maintaining conditions for the nonrefrigerated storage of products (in the case of warehouses). This type of energy use is referred to as "process" use and is not included in the design energy requirements of a building design. Examples of process energy requirements would be those for computer operations, commercial kitchen equipment, or laundries. DOE is considering research to develop a better understanding of the relationship between process energy use and the components of the design energy requirements. For single-family residences, contributions from major appliances were estimated as internal loads in the life-cycle cost analysis. However, the average requirement to operate such appliances was not included in the analysis.

3. As redesigned to achieve maximum practicable levels of energy conservation in 1978 (referred to as the redesigns).

The analysis of climate (Box 14) and building classifications (Box 15), and the statistical analysis of the commercial and multifamily residential building samples (Box 19) were continued in more detail, a comparative analysis of computer program and manual calculation method results was conducted (Box 18), and economic (Box 16) and environmental (Box 17) analyses were initiated.

The research effort at this point provided the information base to support the ANOPR (Box 20).

In the third phase, subsequent analyses were conducted on three broad fronts. First, additional research was required to address energy related issues that surfaced during the research in Phases 1 and 2. These efforts included:

- Further statistical work to derive estimates of the total population of commercial and multifamily residential buildings from the results of the Phases 1 and 2 samples (Box 21).
- Continued examination of the design energy requirements resulting from the application of component performance standards and guidelines (Box 22).
- Refined climate analysis (Box 23).
- Analysis of the energy requirements of various building functions (Box 24).
- Comparison of energy analysis calculation results for more buildings (Box 25).

Second, DOE studied major economic, environmental and regulatory impacts. These included:

- Analyzing the potential national economic impact of the proposed Standards under a number of possible alternative future conditions and writing the Draft Economic Analysis (Box 26). (See Technical Support Document No. 8, Economic Analysis.)

- Conducting an assessment of the potential environmental impacts of the proposed Standards and writing the Draft Environmental Impact Statement (Box 27). (See Technical Support Document No. 7, Draft Environmental Impact Statement.)

- Conducting the initial regulatory analysis which examined alternative forms of and alternatives to the proposed rule, and writing the Draft Regulatory Analysis (Box 28). (See Technical Support Document No. 6, Draft Regulatory Analysis.)

- Developing and applying weighting factors to derive proposed Energy Budget Levels that take into account the value to the Nation of providing

different types of fuel to a building (Box 29). (See Technical Support Document No. 4, Weighting Factors.)

Third, life-cycle cost studies for each of the three major building categories were initiated (Boxes 30, 31, 32). (See Technical Support Document No. 8, Economic Analysis.) The objective of the life-cycle cost studies was to provide an additional information base to assist in the selection of Energy Budget Levels for the proposed Standards (Box 33).

The research program provided DOE with a substantial information base obtained through an extensive research program. To further refine and verify this information base, DOE plans to undertake additional research (Box 34).

## 2.2 Research To Develop Energy Budget Levels

This section describes the research program conducted to provide information for determining proposed Energy Budget Levels for: (1) Commercial and multifamily residential buildings, (2) single-family residences, and (3) mobile homes.

### 2.2.1 Commercial and Multifamily Residential Buildings

During Phase 1, a survey was made of some 3,200 buildings for which construction began in 1975-1976. This provided a baseline representing "current" design practices. The sample represented 12 different building classifications, based on the F. W. Dodge structural classification system.<sup>10</sup> From this sample, responses were collected and analyzed for 1,661 buildings. To permit regional climate variation to be surveyed and analyzed, an initial climatic classification of seven heating/cooling degree-day regions was used for analysis purposes (See Section 2.4.5).<sup>11</sup>

An abbreviated form of a proprietary energy analysis computer program called AXCESS was used to calculate design energy requirements for the building designs.<sup>12</sup>

<sup>10</sup>U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Sample Design" (Jan. 1978).

<sup>11</sup>U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Climate Classification" (Jan. 1978).

<sup>12</sup>U.S.D. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Data Analysis" (Jan. 1978); also, "AXCESS," (Alternate Choice Comparison for Energy System Selection) a proprietary computer program owned by the Edison Electric Institute (EEI). S&H Information Systems, Inc., has developed

In Phase 2, a subsample of 168 buildings from the 1,661 in the Phase 1 survey was selected, using random techniques to assure a representative sample.<sup>13</sup> The building classification system was refined to include 16 categories.<sup>14</sup>

HUD contracted with architects and engineers responsible for the designs of the original buildings to redesign their buildings to use less energy. HUD developed guidelines for the redesign effort, and provided assistance to the redesign teams from knowledgeable consultants and through written technical materials.<sup>14</sup> The design teams were instructed to keep construction costs in the same general range as the original buildings.

In a separate effort, the original designs of the Phase 2 buildings were modified to meet two building energy standards (the November 1977 draft proposed ASHRAE 90-75R and the April 1978 draft version of the HUD Minimum Property Standards).<sup>14</sup> This was done to estimate the effect these standards would have on the design energy requirements of the building sample and to compare these standards with the design energy requirements of the redesigns. The HUD standard, a component performance standard, was applied to multifamily residential buildings; the component performance sections of ASHRAE 90-75R were applied to all other commercial buildings in the Phase 2 sample.<sup>14</sup>

Once all the redesign data had been collected, a more detailed version of AXCESS was used to estimate the design energy requirements of the original, redesigned, and modified buildings.<sup>14</sup> The major results of Phase 2 were:

- The calculation of design energy requirements for a sample of 168

Footnotes continued from last page two versions of this program, which were used in the research. One version uses a small number of data points and uses one day per month as its basis for calculation. The second version contains additional facilities over the EEI version. These two versions are referred to in the balance of this document as AXCESS.

DOE has inspected the available documentation for the program. The documentation examined includes the AXCESS Energy Analysis Reference Manual and AIA Research Corporation, "Basis of Engineering Logic in the S&H Information Systems AXCESS Program" (May 1979). Also see footnote 14.

<sup>13</sup> Brown Associates, Inc., "The Sample Design for Phase Two of the Development of Energy Performance Standards for New Buildings" (March 1978).

<sup>14</sup> U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase Two Report for the Development of Energy Performance Standards for New Buildings, Task Report: Commercial and Multi-Family Residential Buildings" (Jan. 1979).

buildings for which construction began in 1975-1976.

- The calculation of design energy requirements that could be achieved by using more energy conserving design techniques.

- The calculation of design energy requirements that could be achieved by using the minimum component performance requirements of the two standards, ASHRAE 90-75R and the HUD Minimum Property Standards.

#### Statistical Analysis

Using the Phases 1 and 2 sample building results, a statistical analysis was conducted which related the smaller Phase 2 sample to the larger Phase 1 sample. Design energy requirement calculations for each building classification were then developed for the entire population of buildings represented by the Phases 1 and 2 samples (see Technical Support Document No. 2, Statistical Analysis). Estimated energy requirements were derived for both the original and redesigned buildings. These estimates were adjusted using a procedure based on the results of the climate analysis described in Section 2.4.5. DOE used the estimates for each building classification in 78 SMSA's and cities in selecting the proposed Energy Budget Levels for each commercial and multifamily residential building classification presented in the proposed standards. (See Section 3.2 of this preamble and Technical Support Document No. 3, Energy Budget Levels Selection.)

#### Economic Analysis

The Economic Analysis examined the economic consequences of different levels of Design Energy Consumption achievable by the Phase 2 redesigns to determine whether the strategies contained in those redesigns were economically desirable and achievable (see Technical Support Document No. 8, Economic Analysis). "Net present values"<sup>15</sup> were calculated for each building classification and were analyzed to determine whether, on a discounted basis, future energy savings due to the redesigns would exceed increased capital and operating costs. DOE has estimated that the Phase 2 redesigned buildings had an average construction cost increase in the range of 3-5% from the original buildings.

Net present values were calculated from the perspective of the building

<sup>15</sup> "Net present value" as used herein refers to the discounted value of the projected energy savings in new buildings less the investment and operating costs necessary to achieve those reductions in energy use.

owner, the occupant, and the Nation as a whole. Because the average net present value for each redesign building classification was positive, the redesigns were determined to be cost effective and economically achievable.

#### Analysis of Component Performance Standards

A study was conducted to measure the potential improvements in design energy requirements which the original buildings in the Phase 2 sample might have achieved had they been designed to meet exactly the minimum component performance requirements of ASHRAE 90-75R. During the Phase 2 analysis, the inability of the computer program used to model some important requirements, such as "deadband" thermostat control,<sup>16</sup> plus limitations in the manner in which the analysis was to be made, as well as difficulties encountered in interpreting ASHRAE 90-75R, resulted in an inconclusive analysis by the end of Phase 2.<sup>17</sup>

Therefore, in the subsequent research, refinements were made to the methodology, and the computer program was enhanced to include modeling capabilities required for a more complete analysis of ASHRAE 90-75R. In addition, a thorough review has been conducted of the interpretations made of key sections of that standard.

DOE also intends to continue its analysis of issues associated with implementing the Standards for commercial and multifamily residential buildings. One important area of this work concerns the manner in which the existing HUD Minimum Property Standards for multifamily residential buildings, and standards based on ASHRAE 90-75, can be made equivalent to DOE's proposed Standards.<sup>15</sup>

Preliminary results of this analysis are discussed in Section 3.2.9 of this preamble.

#### 2.2.2. Single-Family Residential Buildings

The sequence of research tasks performed to support DOE's determination of the proposed Energy Budget Levels for single-family residential buildings is illustrated in

<sup>16</sup> "Deadband" thermostat control means a control system for heating and cooling which allows minimum heating and cooling within a specified indoor temperature range (e.g., 68°F to 78°F). The controls attempt to maintain conditions by providing heating or cooling only when the indoor temperature is outside of the specified range.

<sup>17</sup> See footnote 14.

<sup>18</sup> AIA Research Corporation Memorandum, "Preliminary Results of Potential Improvements to ASHRAE 90-75R to Determine Possible Equivalence to the Mean of the Phase 2 Redesign Buildings" (Aug. 1979).

Figure 2-4. Phase 1 started with an analysis of an existing National Association of Home Builders Research Foundation (NAHB/RF) survey of over 120,000 houses constructed in 1975 and 1976 (Box 1).<sup>19</sup> This large sample encompassed all major varieties of single-family and multifamily low-rise residential construction throughout the country.

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<sup>19</sup> U.S. Department of Housing and Urban Development and U.S. Department of Energy. "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings. Task Report: Residential Data Collection and Analysis" (Jan. 1978).

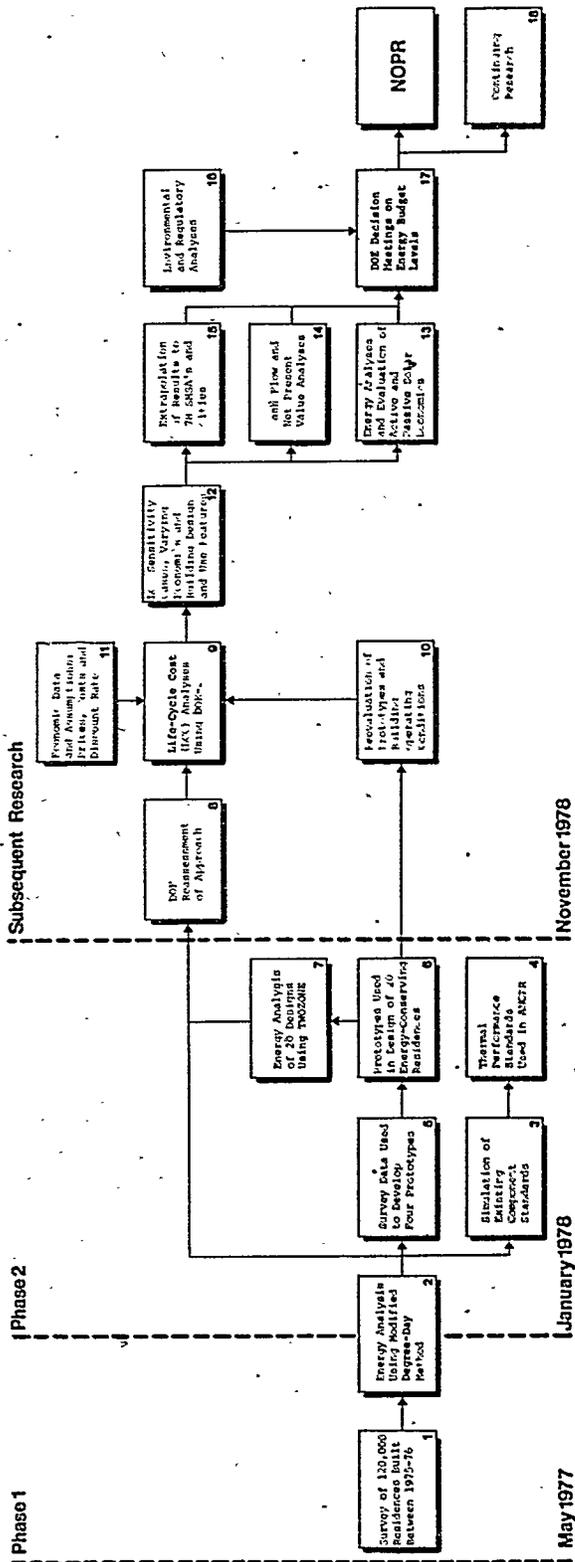


FIGURE 2-4: OVERVIEW OF SINGLE-FAMILY RESIDENTIAL RESEARCH PROGRAM

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A calculation method based on the "degree-day" procedure was used to estimate the energy use for space heating and cooling in the sample buildings (Box 2).<sup>20</sup> Phase 1 produced a data base consisting of building characteristics and estimated energy use for space conditioning for the 120,000-dwelling survey.

In Phase 2 (Boxes 2 through 7), this data base was used to calculate the design energy requirements of the building designs modified for compliance with existing component standards, and to develop more energy efficient residential building designs.

The data base was first used to calculate the design energy requirements of single-family residences<sup>21</sup> designed to meet two component performance energy standards (Box 3):<sup>22</sup> the draft proposed HUD Minimum Property Standards for One- and Two-Family Dwellings (April 1978 version), which specifies thermal transmission requirements for building components, and NAHB's Thermal Performance Guidelines,<sup>23</sup> a cost/benefit approach for calculating levels of thermal protection. The NAHB Thermal Performance Guidelines formed the basis for the residential energy standards approach suggested in the Advance Notice of Proposed Rulemaking (Box 4).

Four prototype designs were prepared from the analysis of the Phase 1 survey data (Box 5). Twenty design teams were selected, based on their experience in designing residences for energy conservation. They were asked to develop "new" residential designs using the prototypes as starting points (Box 6). The designs were intended to result in the maximum possible reduction in design energy requirements, using available energy conservation and passive solar design strategies and technologies.<sup>24</sup> The energy calculation

<sup>20</sup>The degree-day method consists of calculating heat flows through each component of a building in contact with the outside. The method assumes that the daily energy consumption of a building is proportional to the temperature difference between the mean daily outdoor temperature and a base temperature that represents the point at which no energy is needed for heating and cooling the house. Thus, the method accounts for only daily mean temperatures and does not take into account any interaction between building components (e.g., ceiling and exterior walls).

<sup>21</sup>Multifamily low-rise buildings were examined in Phase 2 and in subsequent research as part of the commercial and multifamily residential analysis efforts.

<sup>22</sup>U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase Two Report for the Development of Energy Performance Standards for New Buildings, Task Report: Single Family Dwellings" (Jan. 1979).

<sup>23</sup>National Association of Home Builders, "Thermal Performance Guidelines for One and Two Family Dwellings" (1977).

method used to analyze both the prototypes and the 20 "new" designs was a modified version of the TWOZONE computer program (Box 7).<sup>24</sup>

At the end of Phase 2, an evaluation by DOE of the single-family residential research led to a decision to develop and apply a methodology that departed significantly from that used for commercial and multifamily residential buildings (Box 8). The subsequent research developed a life-cycle cost analysis as the basis for the proposed single-family residential Energy Budget Levels. The reasons for departing from the Phase 2 approach were: (1) The energy-conserving designs were not applicable to the mass housing market in the country; and (2) the economic analysis of the four prototypes and the energy conserving designs was not adequate as a basis for a proposed rule. The reasons for the use of a life-cycle cost methodology (Box 8) for the analysis of single-family residential design energy requirements were:

- The life-cycle analyses permitted the use of well-defined economic criteria that have the potential of maximizing the net economic benefits to homeowners and to the Nation, as well as achieving maximum practicable energy conservation.

- Life-cycle cost analyses of energy conservation in single-family residential buildings was facilitated by the data available on the four prototypes based on the Phases 1 and 2 research and by the relative ease of separating the design energy requirements for single-family residences into requirements of the building envelope and of the internal equipment.

The energy analysis program, DOE-2, was used to analyze the design energy requirements of the four prototypes, theoretically placed in ten cities representing a wide range of climatic conditions. The analysis produced a series of life-cycle cost curves. The curves showed the total cost of energy and conservation, valued at the present, plotted against various possible levels of Design Energy Consumption for the building. These curves made it possible to identify the design energy requirements that would result if the minimum total cost to the consumer could be extracted (Box 9). The point on the curve representing the minimum life-cycle cost to the consumer is hereafter referred to as the "nominal" case.

The key assumptions used in deriving the nominal case were as follows:

(1) The only energy conservation measures considered were those

currently in common practice in the United States. These included increased levels of insulation in the walls, ceilings, and floors, and the consideration of double and triple glazing in addition to single glazing. These measures were applied in order of declining cost-effectiveness to the four prototypes, which were refined versions of the four prototypes developed in Phase 2 (Box 10).

(2) The conservation measures considered did not require any significant changes in the behavior or level of amenity of the occupant(s). DOE established assumptions of how different building types would be used and operated<sup>25</sup> (Box 10). The cost estimates for energy conservation were those previously developed by the NAHB and used by Oak Ridge National Laboratory (Box 11).

(3) The Energy Information Administration Series B Midterm Price Forecast (44 FR 25369, April 30, 1979) was used (Box 11).

(4) A real (i.e., constant dollar) discount rate of 3% was used, corresponding to an interest rate 3% higher than the inflation rate (Box 11).

The results of the analysis of the life-cycle cost curves were subjected to sensitivity analyses in which key economic parameters were varied, as well as building characteristics and use patterns (Box 12). The economic parameters included: Energy price escalators, costs of energy conservation, and discount rates. The building characteristics included: size, shape, orientation, window area, internal loads (heat produced by appliances and related residential equipment), and infiltration (rate of air exchange through the building envelope). The building characteristics and use patterns included: thermostat management (with and without night setback), use of insulating shutters, and ventilation (with and without windows being opened, when natural ventilation could reduce indoor temperature about as effectively as air-conditioner use). For full details of these life-cycle analyses, sensitivity analyses and their results, see Technical Support Document No. 8, Economic Analysis.

The results of the life-cycle cost studies and related sensitivity analyses were used in three ways: (1) As a starting point for evaluating the economics of active and passive solar heating options, to provide a basis for comparing solar costs to conservation costs in identical single-family residential buildings and climates (Box

<sup>24</sup>Lawrence Berkeley Laboratory, "TWOZONE User's Manual," LBL Report No. 6840 (March 1978).

<sup>25</sup>Technical Support Document No. 5, Standard Building Operating Conditions.

13); (2) as the basis for evaluating the cash flow and net present economic costs and benefits of alternative levels of design energy requirements (Box 14); and (3) as the basis for performing regression analyses of design energy requirements against heating and cooling degree-days so that the results could be applied to 78 SMSA's and cities (Box 15) (see Technical Support Document No. 10, Climate Analysis).

The results of the research program on single-family residential buildings, along with the results of the environmental and regulatory analyses (Box 16), formed the basis for DOE's decisions on the levels of the proposed single-family residential Energy Budget Levels (Box 17). The results of the life-cycle cost studies and related information (Boxes 10, 11, 12, and 13) were particularly important elements in DOE's decisions. Of the four prototypes examined in the analysis, three (single-story, split-level, and two-story) produced very similar results. Therefore, results were used for only two prototypes (attached and detached) in the development of the proposed Energy Budget Levels for single-family residences. Section 3.0 of this preamble and Technical Support Document No. 3, Energy Budget Levels Selection, describe the process followed in selecting the levels of the proposed Energy Budget Levels.

DOE is considering the following subjects for the continuing research effort in support of the final rule for single-family residential buildings (Box 18):

- Expansion of the list of 10 SMSA's and cities to 32 SMSA's and cities for life-cycle cost analyses.
- Continued analysis of the economics and performance of heat pumps.
- Study of additional prototypes, possibly including single-family residences attached on one side only and residences with heated basements.
- Analysis of new, innovative energy conservation concepts, such as the heat recuperator.
- Studies of the life-cycle cost of heating and cooling equipment, and how it interacts with different conservation measures for the building envelope.
- Further analysis of domestic hot water usage data.
- Continued analysis of renewable energy systems, including additional passive solar options and wood burning stoves.
- Reevaluation of life-cycle cost curves using marginal energy prices and updated conservation costs.

A discussion of some of the issues involved in this research is found in Section 2.3.3. DOE is planning continued analysis of issues associated with

implementing the Standards for single-family residential buildings. One issue concerns the HUD Minimum Property Standards. A revision of the HUD Minimum Property Standards to achieve equivalency with the Standards is required by Section 252 of the National Energy Conservation Policy Act (Pub. L. 95-619). This subject is addressed in a preliminary report prepared for DOE.<sup>24</sup> The subject is also considered in the discussion of single-family residential design energy requirements found in Section 3.3 of this preamble.

### 2.2.3 Mobile Homes

DOE has not included mobile homes in the proposed rule at this time. The research that is necessary and appropriate to propose a mobile home energy performance standard has not been completed. DOE is working with HUD to complete that research. The following discussion presents past research efforts and the thrust of expected future studies.

The research to date has been conducted in three phases. Phase 1 consisted of surveying a sample of mobile homes that represented over 160,000 units. The sample was analyzed, using the same calculation method that was used in Phase 1 for single-family residences, to arrive at a baseline of energy requirements for space heating and cooling of mobile homes (see discussion in Section 2.2.2).<sup>27</sup>

In Phase 2, mobile home prototypes were developed (two single-wide and two double-wide units), based upon the Phase 1 data. Then, the prototypes were used to develop new mobile home designs that approached the maximum technically feasible reductions in design energy requirements. The resulting energy savings of the new designs were calculated using a proprietary computerized calculation method.<sup>28</sup>

The energy analysis indicated that all four original prototypes met the energy requirements of the HUD Mobile Home Construction and Safety Standards and that significant energy savings were

possible with the maximum technically feasible designs.<sup>29</sup>

The term "maximum technically feasible design" (MTFD) was defined to mean the design resulting in a mobile home that required the least possible energy to heat and cool, yet:

- Required no change in owner lifestyle.
- Could be mass produced.
- Met reasonable requirements for life and safety.
- Could be transported over highways within existing regulations.
- Was sized to fit prevailing mobile home park space limitations.

The Phase 2 analysis for mobile homes was, like the analysis for other building classifications, primarily an energy analysis. A detailed analysis was conducted of changes in construction costs from the prototypes to the following two sets of maximum technically feasible designs: (1) Factory installed conservation options only, or (2) factory plus site installed conservation options.<sup>30</sup> However, no economic analysis was conducted on the change in first cost to the mobile home owner compared with the changes in the monthly costs of mortgage and fuel combined.

DOE considers a careful cost-benefit analysis to be especially important for a mobile home standard. These dwellings are at the low end of the cost spectrum for housing. In many cases, mobile homes provide the only affordable option for new homes for many citizens. Therefore, any new regulation in energy conservation should not interfere with the ability of potential mobile home owners to:

- Finance the down payment for a mobile home (a potential consequence of a major increase in first cost of manufacturing).

- Pay for the combined monthly mortgage costs and monthly fuel costs (fuel costs would decrease relatively, while mortgage costs might increase).

Therefore, during the third phase of the research, DOE conducted an initial life-cycle cost analysis on the most prevalent single-wide prototype. The analysis used the existing energy data developed from Phase 2 and developed additional cost data for each energy conservation option considered.<sup>31</sup>

<sup>24</sup> Lawrence Berkeley Laboratory, "Residential Energy Performance Standards: Comparison of HUD's Minimum Property Standard and DOE's Proposed Standard," draft report (Report No. LBL-9817) (October 1979).

<sup>27</sup> See footnote 19.

<sup>28</sup> The T. R. Arnold & Associates (TRAA) computer program is based on the HUD Mobile Home Construction and Safety Standards, Subpart F, with guidance from ASHRAE manuals and the manual, "Mobile Home Heating and Cooling Load Calculations for Determining Compliance with the Energy Conservation Criteria of the Standard for Mobile Homes," 501 BM, 1978, published by the National Fire Protection Association (NFPA). TRAA derived thermal transfer coefficients from ASHRAE and NFPA 501 BM using hand calculations.

<sup>29</sup> T. R. Arnold Associates, "Development of Building Energy Performance Standards for Mobile Homes" (June 1978).

<sup>30</sup> Steven Winters Associates, Inc., "Cost Analysis of Mobile Homes" (November 1978).

<sup>31</sup> U.S. Department of Housing and Urban Development and the U.S. Department of Energy, "Phase 2 Report for Development of Building Energy Performance Standards: Task Report/Mobile Homes" (June 1979).

The results of this life-cycle cost analysis indicated that additional cost-beneficial energy conservation strategies existed which would result in reductions in both energy use and life-cycle costs. However, the results were limited for the following reasons:

- The energy calculation method did not permit an accurate analysis of certain conservation options.
- The procedure for deriving energy results for such options was not fully documented in the Phase 2 research.
- The energy savings for some conservation strategies could not be disaggregated in order of cost-effectiveness.
- An analysis of enough different sequences of cost analysis strategies was not done to identify a life-cycle minimum range.

For these reasons, DOE determined that the research to date was not sufficient for proposing a standard for mobile homes. To be responsive to the economic requirements of potential mobile home owners, a full and detailed cost-benefit analysis should be completed. This is currently planned and will provide a sound economic basis for the selection in the future of appropriate levels of Standards for mobile homes.

### 2.3. Additional Research Affecting Energy Budget Levels

The discussions in Sections 2.1 and 2.2 address the research program formulated to assist DOE in selecting the proposed Energy Budget Levels. As noted, the commercial and multifamily residential buildings analysis relied heavily on a detailed statistical analysis of the designs and redesigns of a number of building types in different climate regions. The analysis of single-family residential buildings used the results of a major survey to develop prototypes, which were then analyzed on a life-cycle cost basis. The impacts of the proposed standards for single-family residential, commercial and multifamily residential buildings were assessed using economic modeling techniques which projected energy demand and direct and indirect economic costs and benefits of alternative levels of proposed Energy Budget Levels. Environmental and regulatory analyses also provided relevant information.

This section of the preamble extends this discussion to three additional issues, each of which will require substantial research before the results can be incorporated into the Standards. The issues are: (1) The health effects of possible degradation in indoor air quality that can result from reducing air infiltration rates in single-family

residential buildings and ventilation rates in commercial and multifamily residential buildings; (2) the potential for a life-cycle cost analysis of commercial and multifamily residential buildings, to identify new cost-effective means of significantly reducing their design energy requirements; and (3) a number of issues affecting single-family residential design energy requirements, including the potential contribution of new and innovative conservation measures.

The first issue requires research in three areas: (1) Measurement of air infiltration rates; (2) analysis of the relationship between building design, building construction, air infiltration rates, and concentrations of indoor air pollutants; and (3) health and other effects of indoor air pollutants.

DOE believes that the proposed Standards have been formulated in a manner that does not adversely affect indoor-air quality, as discussed in the next Section.

The second and third issues require both continuing research efforts and commercial experience with new approaches to energy conservation.

DOE is supporting work in all of these areas. To the extent that new data are available prior to the final rulemaking, DOE will consider that data in selecting the final Energy Budget Levels. However, DOE anticipates that the ongoing research in these areas will be of particular use in future updates of the Standards.

#### 2.3.1 Environmental Issues

In setting the proposed Standards, DOE was specifically concerned about the issue of indoor air quality.<sup>32</sup> DOE recognized the potential for conflict between energy conservation objectives, which would reduce infiltration and ventilation rates in buildings, and the adverse impacts of indoor air pollutants on the public health and welfare, which can be mitigated by increasing the infiltration and ventilation rates of buildings. Because of uncertainty in (1) data on and measurement of air infiltration rates in buildings, (2) the relationship between infiltration and ventilation rates of buildings and the concentrations of indoor air pollutants, and (3) the health effects of different levels of indoor air pollutants, DOE has taken a cautious approach in dealing with this issue.

DOE's basic approach has been to design the Standards so that no change

is likely to occur in the levels of indoor air pollutants of buildings constructed after the Standards are implemented. The manner of achieving this objective is discussed separately below for (1) commercial and multifamily residential buildings, and (2) single-family residential buildings.

The Design Energy Consumption of a commercial or multi-family residential building is evaluated using the ventilation rates required by local health codes. DOE anticipates no change in local health codes as a result of the Standards. Therefore, the Standards are not expected to either reduce ventilation rates for commercial and multi-family residential buildings or diminish indoor air quality in these buildings.

In developing the proposed Energy Budget Levels for single-family residential buildings, DOE used a value of 0.6 air changes per hour on an average winter day, which was used to calculate infiltration rates for all such buildings.<sup>33</sup> The same value is included in the Standard Evaluation Technique (discussed in Section 4.0 of this preamble) for evaluating the Design Energy Consumption of a single-family residential building. No credit or penalty is currently given for the design of a building with a lower or higher infiltration rate. Because the Standards do not give credit for designs that reflect low rates of infiltration, they are expected to have no effect on the indoor air quality of single-family residential buildings.

DOE is presently developing approaches to evaluate the effects of different measures to reduce infiltration in single-family residential building designs (e.g., the use of continuous polyethylene vapor barriers, weather stripping on windows, and caulked sills). These measures could reduce the average air infiltration rate to 0.1 air change per hour in a mild climate and 0.2 air change per hour in a colder climate. If such measures had been considered and included in the Standard Evaluation Technique, then the Standards would impact indoor air quality by giving credit to a design with low air infiltration rates.

DOE welcomes public comment on this issue, specifically with regard to: (1) The desirability of the present approach, in which no credit is given for reductions in the rate of air infiltration and no adverse impact on indoor air quality is expected, and (2) the feasibility and advisability of

<sup>32</sup>This subject is addressed in Technical Support Document No. 7, Draft Environmental Impact Statement and in Technical Support Document No. 3, Energy Budget Levels Selection.

<sup>33</sup>The treatment of air infiltration rates in the evaluation technique for single-family residential buildings is discussed in Technical Support Document No. 1, The Standard Evaluation Technique.

developing an approach that evaluates and gives credit for reductions in air infiltration in single-family residential buildings.

### 2.3.2 Life-Cycle Cost Analyses of Commercial Buildings

The Phases 1 and 2 research effort on commercial buildings was based primarily on (1) a statistical analysis of a large sample of buildings for which construction began in 1975-1976, and (2) the simulation of the design energy requirements of the energy conserving redesigns of a selected subsample of those buildings. DOE has extended this research to include a preliminary analysis of the life-cycle costs of three commercial office buildings (selected from the Phase 2 sample for their typical characteristics) in which many different energy conserving measures are integrated into the designs of the buildings. The general approach to the life-cycle cost analysis of commercial buildings is similar to that performed on single-family residential buildings. However, because many conservation measures for commercial buildings are an integral part of the building design and equipment configuration, the life-cycle cost approach is more complex than for single-family residential buildings.<sup>34</sup>

The results of the preliminary life-cycle cost analysis of commercial office buildings indicated a potential for significant reductions in Design Energy Budgets below those derived from the redesign studies.<sup>35</sup> Two design strategies appeared especially promising: (1) the introduction of a "deadband" thermostatic control system, and (2) automatic control systems for incorporating daylighting into building design.<sup>36</sup>

The life-cycle cost analysis of energy-conserving designs of commercial buildings appears to be promising. DOE intends to continue this analysis using commercial building prototypes yet to be developed. The anticipated results will provide information about the conservation investment and the value of energy savings of specific energy conservation and renewable energy design strategies. If this research shows

that more stringent conservation measures are technically, economically, and commercially viable, DOE may amend the Standards and decrease the Energy Budget Levels for such building classifications.

DOE invites public comment on these matters, particularly: (1) The desirability and feasibility of applying a life-cycle cost approach to commercial buildings, and (2) the description and evaluation (in terms of successes and failures) of innovative energy conservation strategies for commercial buildings.

### 2.3.3 Issues Affecting the Energy Budget Levels for Single-Family Residential Buildings

The continuing research activities for single-family residences are discussed at the end of Section 2.2.2. The purpose of this section is to elaborate on selected research issues that can affect selection of the Energy Budget Levels. The issues addressed are: (1) Domestic hot water usage data, (2) the practicability and availability of new and innovative energy conservation measures for single-family residential buildings, (3) renewable energy resources, (4) masonry construction, and (5) extensions to the life-cycle costing methodology for energy conserving measures used in single-family residences. When applicable, the discussion includes comments received in response to the Advance Notice of Proposed Rulemaking, ANOPR, and an explanation of DOE's ongoing research effort.

#### Domestic Hot Water Usage

The proposed Energy Budget Levels for single-family residences contain three energy components: Space heating, space cooling, and domestic hot water heating. The proposed Energy Budget Levels for space heating and cooling vary to reflect regional changes in climate conditions; they also apply to each square foot of gross area of the residence, regardless of the size of the residence. (See Technical Support Document No. 8 Economic Analysis)

On the other hand, the proposed Energy Budget Levels (a separate level for each of the different nonrenewable fuels) for domestic hot water heating are fixed quantities for all regions of the country; also, they are based on an average number of occupants per residence and do not vary with the size of the residence.

The proposed Energy Budget Levels for domestic hot water heating have been included for single-family residences because:

- The contribution of domestic hot water to the Design Energy

Consumption is large, on the order of 50% in a moderate climate (the percentage is smaller in colder climates and larger in warmer climates).

- The approach provides additional encouragement for the use of solar domestic hot water heaters, as discussed below.

(See Section 3.3 of this preamble and Appendix I of the proposed rule for a further description of the inclusion of domestic hot water in single-family residential Design Energy Budgets.)

There are two issues pertinent to domestic hot water usage that DOE intends to address in continuing research:

- Improvement of the estimation techniques to establish the average level of domestic hot water usage.

- Application of life-cycle costing techniques to evaluate economic tradeoffs between increases in the efficiency of domestic hot water heaters and energy conservation measures in the building envelope.

DOE is interested in information regarding the degree to which the inclusion of domestic hot water in the Design Energy Budget will encourage the use of solar domestic hot water heaters.

Public comments on these and other issues relative to domestic hot water heating will be useful to DOE in developing the final rule.

#### New and Innovative Energy Conservation Options

As described in Section 2.2.2, in evaluating and selecting the proposed Energy Budget Levels for single-family residences, DOE considered only those conservation measures that are in common practice. DOE is particularly interested in the availability, performance and costs of the following measures, which could be used in single-family residences:

- 2 x 6 studs (as a means of increasing the thickness of insulation of exterior walls) or two rows of 2 x 4 studs.

- Triple glazing, achieved through the use of either storm windows with double glazing or windows with three panes of glass.

- Ceiling insulation with thermal resistance of greater than R-38.

- Measures to reduce air infiltration and ways to reduce indoor air pollution with low infiltration levels.

- Different approaches to passive solar energy design strategies.

- Any other innovative techniques that might significantly reduce energy requirements in single-family residential buildings, especially those techniques that might have wide applicability in various parts of the Nation.

<sup>34</sup>Federal Energy Management and Planning Programs: Proposed Methodology and Procedures for Life Cycle Cost Analysis of Federal Buildings, 44 FR 2536 (April 30, 1979).

<sup>35</sup>AIA Research Corporation, "Life Cycle Cost Study of Commercial Buildings" (draft) (Oct. 1979).

<sup>36</sup>Daylighting involves the use of photocell controls to automatically reduce artificial lighting when sufficient light is available from natural light sources. These controls are generally combined with building design strategies that provide access to appropriate levels and quality of light where needed.

Information submitted to DOE will be considered in developing the final rule, as well as in evaluating the possibilities and research priorities for updating the Standards.

#### Renewable Energy Sources: Effects On Energy Budget Levels

The treatment of renewable energy sources for use in buildings has played a major role in the development of the proposed Standards. To date, this has occurred through an analysis of the economic viability of active and passive solar space heating systems and through the decision to include domestic hot water heating as a part of the proposed Energy Budget Levels, which would permit the designer greater flexibility in selecting conservation measures if active solar domestic hot water heating is incorporated into the design. DOE also intends to encourage solar energy options by describing and explaining their use in a Manual of Recommended Practice.<sup>37</sup> Furthermore, as energy prices increase and the cost of renewable energy systems decline, the Standards are expected to be updated to reflect the inclusion of renewable energy systems in the package of options contributing to the life-cycle costs used to establish the Energy Budget Levels.

#### Masonry Construction

DOE has analyzed the thermal characteristics of masonry walls for the purpose of deciding if a single-family residential prototype with masonry walls should have an Energy Budget Level different from the other prototypes.

This study, as well as analyses completed for HUD, has shown that residences with exterior masonry walls use only slightly less energy than residences with frame walls.<sup>38</sup> Since no significant differences were found, DOE proposes to give masonry construction the same Energy Budget Levels as frame residences. Residences with exterior masonry walls can meet the Design Energy Budgets either by using available, cost-effective insulation strategies or by reducing energy losses through other components (e.g., windows, ceilings, floors).<sup>39</sup>

<sup>37</sup> "Manual of Recommended Practice" is a document which gives examples of building designs which meet or exceed the requirements of the Standards and explains why such designs are appropriate for particular environmental conditions, building classifications and building uses.

<sup>38</sup> A summary of analysis results to date is contained in Technical Support Document No. 8, Economic Analysis.

<sup>39</sup> The proposed rule does specify that interior masonry and any other construction technique that may provide passive solar gains to the house be given appropriate credit through the use of the

DOE is unaware of data or other documentation to support a special approach for masonry construction. If such information is submitted to DOE, it will be considered in the development of the final rule.

Continuing analysis of masonry construction will focus on: (1) Reviewing methodologies and results of energy simulations of masonry buildings, and (2) analyzing different configurations of insulation for masonry walls.

#### Extensions to Single-Family Residential Life-Cycle Costing Methodology

There are at least two main issues of the single-family residential life-cycle cost analysis that affect the Energy Budget Levels: (1) Extension of the approach to include efficiency improvements in building heating and cooling equipment, as well as energy conservation measures for the shell of the building, and (2) refinement of the economic parameters used in the analysis.

DOE presently intends to extend the single-family residential life-cycle cost analysis to include certain residential equipment efficiencies. Included will be an analysis of the cost-effectiveness of improving the efficiency of furnaces, air-conditioners, heat pumps and domestic hot water heaters. DOE will then be able to compare investments in more efficient equipment with investments in conservation options for the design of the building shell.

The economic parameters used in the life-cycle cost analysis may change in the following ways, depending on the availability of reliable information: (1) The fuel price projections may be changed to use prices based on replacement energy costs (e.g., costs of producing and delivering an additional quantity of energy), and (2) the costs of the energy conservation options will be based on the best information available at the time of the final rule.

Comments on these and other possible changes to the life-cycle cost approach are requested.

#### 2.4 Research Affecting the Format of the Energy Budget Levels

The research program described thus far was performed primarily to assist DOE in determining the appropriate Energy Budget Levels. This has included building surveys, building design experiments, the analysis of prototypical buildings, and environmental and economic analyses.

The research program described below was necessary to establish a

Standard Evaluation Technique (discussed in Section 4.0 of the Preamble).

format to be used in formulating the proposed Energy Budget Levels.

The research examined a number of areas:

- Weighting factors for different fuel types, to reflect the relative value to the Nation of conserving different fuels.
- Appropriate incentives for the use of renewable energy resources, through the application of the Design Energy Budget to a building design.
- Building design classifications, to reflect the varying energy requirements of buildings designed to fulfill different purposes.
- Standard Building Operating Conditions, to provide consistent conditions under which the Design Energy Budgets of different building designs are evaluated.
- A climate selection procedure to reflect the impact of climatic variations on the energy requirements of building designs.
- A unit of measurement for the Design Energy Budgets.

These factors are discussed in the following sections. (Also, see Technical Support Document No. 3, Energy Budget Levels Selection.)

The approach taken in the following sections includes, as appropriate, an explanation of the issue, a summary of comments received on that issue in response to the ANOPR, the status of DOE's research and analysis of the issue, and the reasons for any decisions that have been made for this proposed rule. The commentary on the responses to the ANOPR is emphasized in several sections because of the interest that the respondents showed in that particular issue.

#### 2.4.1 Weighting Factors

##### Summary

DOE considered three alternatives for expressing the proposed Energy Budget Levels in terms of weights for each type of nonrenewable fuel used (natural gas, oil and electricity):

- The use of Energy Budget Levels expressed in terms of the energy content of the fuel delivered to the building site, with all weights set equal to one (equivalent to viewing design energy from the perspective of the building boundary).
- The use of Resource Utilization Factors (RUF's) and Resource Impact Factors (RIF's) to reflect, respectively, the energy consumption to the Nation of providing energy to a building site, starting at the energy source, and the social impacts of using different fuel types.

- Weighting factors based on the relative "value" of the different fuels to

the Nation, expressed in terms of (1) fuel prices, and (2) explicit national policy determinations of non-market values associated with specific fuel types.

For this proposed rule, the use of the first two alternatives has been rejected by DOE in favor of weighting factors based on DOE's assessment of the value of different fuel types to the Nation. This section discusses the past approaches considered, explains the reasons for DOE's decision on weighting factors, and discusses the effects that the use of weighting factors is likely to have.

#### Approach Originally Suggested in the ANOPR

In the ANOPR, DOE suggested Design Energy Budgets that reflected energy consumed from the source (e.g., coal mine, oil well, gas well) to the building site, instead of energy consumed at the site, using multipliers called Resource Utilization Factors and Resource Impact Factors. RUF's are multipliers of building boundary energy that convert the quantity of energy consumed at the building site to an equivalent amount of energy from its source; i.e., to account for not only the Btu's of energy used within the building but also the energy consumed in refining, converting, and transporting raw energy into delivered energy at the building site.

Resource Impact Factors are multipliers of building boundary energy to reflect differing social values to the Nation of using different types of fuel.

In the ANOPR, DOE expressed the suggested Design Energy Budgets in terms of RUF's. All RUF's were set equal to one, pending the outcome of research to develop an analytical basis for deriving them. Thus, the ANOPR presented a framework for expressing the Design Energy Budgets that could account for all losses of energy from the source as converted into useful energy for space conditioning and other uses in buildings. The ANOPR suggested the use of RUF's and RIF's based on national averages.

#### Difficulties With the Approach Taken in the ANOPR

Sixty-three comments addressed the issue of RUF's/RIF's. Three views generally were taken: (1) Comments favoring the use of RUF's; (2) comments opposing the use of RUF's, or suggesting that the RUF's be set equal to one for all fuels (i.e., expressing the Design Energy Budgets as the sum of the energy content of the fuels delivered to the building site); or (3) comments urging consideration of RIF's, along with RUF's.

Most of the proponents of RUF's indicated that their use was simple enough for practical application, that

they are typical engineering solutions to typical engineering problems. These comments went on to suggest various refinements to the Design Energy Budgets as outlined in the ANOPR.

Three comments advocated the use of local or regional, as opposed to national, RUF's. Three other comments observed that RUF's should be based on actual records and projections prepared by the local utility serving the building in question.

Opponents of RUF's and RIF's contended that it was the intent of Congress to limit the scope of the Standards to site-based energy only. Seven comments specifically observed that the national average RUF's suggested in the ANOPR would encourage the continued use of natural gas and oil, contrary to the Administration's policies and national interests. Another commented that RUF's did not account for utility cogeneration possibilities. One comment criticized RUF's for not considering all energy related factors. Finally, many opponents of RUF's suggested that their use penalized all types of electrical use.

The third group of comments addressed the use of RIF's in conjunction with RUF's. They suggested that using RUF's alone would create a distortion and that the use of RIF's and RUF's together would account for differences in social considerations involved in the use of different fuels. Several comments suggested ways in which RIF's might be determined: (1) Through use of a fuel reserve index; (2) through calculation of pounds of atmospheric pollutants produced per unit of energy converted; and (3) through consideration of externalities (i.e., adverse impacts not accounted for in the pricing system). Six comments further observed that a full complement of RIF's/RUF's should be developed for all types of fuels and energy resources, even to the point of differentiation among grades of coal and petroleum distillates.

Three commentators suggested not using RUF's without RIF's. One comment suggested that RIF's were a good approach but were impractical at this time.

#### DOE's Decisions on Weighting Factors

Consideration of the public comments, along with the results of DOE's research program, led to renewed consideration of alternatives to RIF's and RUF's.

As noted, one alternative was to express the Design Energy Budgets in terms of Btu's of energy used at the building boundary; that is, using weights equal to one for all forms of energy. Design Energy Budgets expressed in

terms of energy use at the building boundary are simple to comprehend since they are expressed in terms of metered energy into the building, a concept with which designers and builders are familiar. This approach, however, ignores energy losses in the conversion of an energy resource into a useful energy form (e.g., synthetic fuels and electricity, whose inefficiencies are concentrated in that part of the fuel cycle upstream of the building boundary).

DOE decided to reject both the use of RUF's and RIF's and the use of weights that would effectively value all forms of energy equally at the building line.

DOE concluded that both approaches would be inadequate because of their inability to reflect the relative value to the Nation of conserving different nonrenewable fuels. Both would weigh the consumption of fuels, but neither would take adequate account of social or policy considerations. Thus, the scarcity value of fuel would be ignored, as would the true cost to the Nation of consuming certain fuels. Also, such weights would be unable to reflect such important concerns as the national security cost inherent in becoming more dependent on imported fuels.

DOE recognizes the potential of a combined RUF/RIF approach to overcome the inadequacies mentioned above. However, DOE has reservations about the combined RUF/RIF approach because of its complexity and its difficulty in making explicit the relative importance of the various factors affecting the selection and presentation of a Design Energy Budget.

Consequently, DOE has developed an approach using weighting factors that explicitly account for the cost of fuels and the value to the Nation of conserving different fuels. The use of the proposed weighting factors can help create an environment in which building designers are encouraged to make design tradeoffs and fuel choices that reflect how the Nation values various forms of energy.

The general approach starts with the market prices of the various fuels, where a portion of their relative values is reflected. An important issue is whether to derive the factors using average prices or replacement costs. (Average prices of energy are based on the existing mix of old and new energy sources; replacement costs are the costs of new energy sources such as a new powerplant.) DOE believes that replacement costs are the most appropriate indicator of the cost to the Nation of producing new sources of energy for new buildings, and that replacement costs are preferable for the

development of weighting factors. However, since acceptable estimates of such costs were not available in time for this proposed rule, average price forecasts were used to derive the proposed weighting factors.

Another issue is whether to include a premium for oil and gas, to recognize in the same way as the Powerplant and Industrial Fuel Use Act of 1977 (FUA) (Pub. L. 95-620) that saving a barrel of oil is worth more to the Nation than its price reflects. Consistent with FUA, DOE has decided to add a premium of \$1.29 per million Btu to the oil and gas prices to derive the weighting factors. (See Technical Support Document No. 4, Weighting Factors.)

A final issue concerns the aggregation of fuel mix across geographic regions and building types. For purposes of this proposed rule, DOE prescribed one set of weighting factors for all commercial and multifamily residential building types and another set of weighting factors for all single-family residential buildings. The weighting factors were national averages and were the same for all geographic regions. Insufficient regional data was available to develop regional weighting factors. For commercial and multifamily residential buildings, the weighting factors were applied by using an average mix of fuels for the buildings, which varied from region to region of the country. The regional fuel mix averages used reflect the generally larger percentage of electrical energy used in the southern areas of the country. Should the ongoing research identify serious inequities in this approach, appropriate modifications will be considered for the final rule:

Until the ongoing research related to weighting factors and replacement costs is complete, weighting factors based on average prices are being used. These estimates are calculated from relative national average prices for oil and electricity projected for 1985 using the mid-term forecast published in the April 30, 1977, Federal Register.<sup>40</sup> These estimates are chosen to be consistent with the forecast used in the economic analysis (see Technical Support Document No. 8, Economic Analysis).

Technical Support Document No. 4, Weighting Factors, describes the research and derivation of the weighting factors proposed by DOE. The following proposed weighting factors are used:

	Natural gas	Oil	Electricity
Single-family residential.....	1	1.22	2.79
Commercial and multi-family residential.....	1	1.20	3.08

#### The Effect of Using the Proposed Weighting Factors

The weighting factors are used as a way of expressing the Design Energy Budget of a building design. Application of the weighting factors is straightforward. The designer first calculates the energy requirements by fuel type. The energy requirement for each fuel type, expressed in MBtu/sq. ft./yr, is then multiplied by the appropriate weighting factor for the fuel type. These weighting figures are then summed over all fuels to arrive at the Design Energy Consumption of the building. The value of the Design Energy Consumption must be less than or equal to the Design Energy Budget (determined in accordance with Appendix I of the proposed rule) for the building design to be in compliance with the Standards.

Table 2-1 illustrates Energy Budget Levels for commercial and multifamily residential buildings for eight cities in the Nation.<sup>41</sup> These Energy Budget Levels are expressed in terms of weighted MBtu/sq. ft./yr, using the values of the weighting factors presented in Section 2.4.1. The Standard Evaluation Technique (Section 4.0) specifies that the weighting factors used to establish the Design Energy Budget must also be used in calculating the Design Energy Consumption.

Many designers are accustomed to thinking about energy use in terms of the energy required at the building boundary. Because the Energy Budget Levels in Table 2-1 are calculated using weighting factors, the values may not be familiar. For this reason, three sets of illustrative Energy Budget Levels are presented in Table 2-2: the first set is in units of MBtu/sq. ft./yr of energy at the building or site, the second set, in bold print, is in MBtu/sq. ft./yr of energy using weighting factors, and the third set is in MBtu/sq. ft./yr of energy at the source (i.e., RUF-weighted).

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<sup>41</sup>The Energy Budget Levels in the proposed Standards are presented in Appendix I, for commercial, multifamily residential and single-family residential buildings in 78 SMSA's and cities.

<sup>40</sup>Technical Support Document No. 3, Energy Budget Levels Selection, contains tables showing values that might have been selected for the Energy Budget Levels if it has been decided to express the Energy Budget Levels at the building boundary or in terms of RUF's and RIF's.

TABLE 2-1: ILLUSTRATIVE ENERGY BUDGET LEVELS FOR COMMERCIAL BUILDINGS FOR EIGHT CITIES (in MBtu/sq. ft./yr)

State	SMSA															
	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High-Rise	Multifamily Low-Rise	Nursing Home	Office, Large	Office, Small	School, Elementary	School, Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Minnesota	142	109	144	335	180	140	110	175	123	117	122	138	198	155	157	93
Missouri	133	110	136	353	175	128	112	163	119	109	105	128	192	150	149	72
District of Columbia	127	107	129	353	169	120	109	164	115	104	96	121	185	144	142	63
Florida	152	142	161	406	203	133	147	201	140	125	103	141	219	179	178	41
Texas	131	116	136	358	175	119	119	171	120	107	94	124	190	152	150	50
California	114	103	117	364	158	104	106	153	107	92	75	107	172	134	128	40
Oregon	119	98	120	353	161	116	99	154	108	97	91	115	176	135	131	66
Massachusetts	125	101	126	338	165	121	102	159	111	102	99	121	181	140	139	72

TABLE 2-2: ILLUSTRATIVE COMPARISON OF WEIGHTED COMMERCIAL ENERGY BUDGET LEVELS WITH SITE- AND SOURCE-BASED ENERGY BUDGET LEVELS (in MBtu/sq. ft./yr.)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High-Rise	Multifamily Low-Rise	Nursing Home	Office, Large	Office, Small	School, Elementary	School, Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Minnesota	Minneapolis	58	45	59	140	74	58	45	72	51	48	50	57	82	64	65	38
		142	109	144	335	180	140	110	175	123	117	122	138	198	155	157	93
		156	120	158	370	199	154	122	193	135	129	134	152	218	171	173	103
Missouri	St Louis	52	43	53	140	68	50	44	66	47	43	41	50	75	59	58	28
		133	110	136	353	175	128	112	163	119	109	105	128	192	150	149	72
		146	121	149	388	192	140	123	178	131	120	115	141	210	165	164	79
District of Columbia	Washington	50	42	51	140	66	47	43	64	45	41	37	47	72	56	56	24
		127	107	129	353	169	120	109	164	115	104	96	121	185	144	142	63
		139	117	142	388	186	132	120	180	126	114	105	133	203	159	156	69
Florida	Miami	52	48	55	140	69	45	50	68	48	43	35	48	74	61	60	14
		152	142	161	406	203	133	147	201	140	125	103	141	219	179	178	41
		168	157	177	447	224	147	162	222	155	138	113	156	241	197	196	45
Texas	Dallas	51	45	52	140	67	46	46	66	46	41	36	48	73	58	40	19
		131	116	136	358	175	119	119	171	120	107	94	124	190	152	150	50
		145	128	150	395	193	132	132	189	132	119	103	136	209	168	166	55
California	San Diego	43	39	44	140	60	39	40	58	41	35	28	41	65	51	49	15
		114	103	117	364	158	104	106	153	107	92	75	107	172	134	128	40
		126	114	129	403	175	115	117	169	119	102	83	119	190	149	142	44
Oregon	Portland	47	38	47	140	63	45	39	60	42	38	35	45	69	53	51	26
		119	98	120	353	161	116	99	154	108	97	91	115	176	135	151	66
		131	107	131	388	177	127	108	169	119	106	100	126	194	148	144	73
Massachusetts	Boston	51	41	52	140	67	50	42	65	45	42	41	49	74	57	57	30
		125	101	126	338	165	121	102	159	111	102	99	121	181	140	139	72
		137	111	139	371	181	133	112	174	122	112	109	133	198	154	152	79

58 Building line design energy 142 Weighted Energy Budget Level 156 RUF-Weighted design energy requirement

The implication of using weighting factors was clarified by examining the effects of the chosen weighting factors on the capability of a building design to meet Standards expressed, for example, in terms of RUF's or in terms of site weighted units. The Phase 2 commercial and multifamily residential redesign buildings were reviewed to determine which ones would meet the Standards (set at about the same level of stringency) expressed in terms of various weighting schemes. The results of that examination revealed that most of the basically well designed buildings that would be in compliance with a Design Energy Budget where all weights were equal to 1.0 (i.e., site-based) would also be in compliance with a Design Energy Budget where the weighting factors were derived by DOE as noted above, and with RUF's as well.

Even though the weighting factors are not likely to significantly affect a building design that is in compliance with the proposed Standards, they will be important in influencing a designer to save one or another type of fuel when faced with that option during the design process. As discussed in Technical Support Document No. 4, Weighting Factors, the use of weighting factors encourages designers to conserve energy in a cost-effective manner (or in a manner consistent with the value to the Nation of saving different nonrenewable fuels). Thus, if a designer must reduce the energy requirements of a building design by a few MBtu's/sq. ft./yr to achieve compliance with the Standards, he is more likely to reduce gas if site-based weighting factors are used and more likely to reduce electricity if the value-based weighting factors given in this proposed rule are used (all other things being equal).

In short, the use of DOE's proposed weighting factors will not significantly affect the overall energy savings expected to be achieved by the Standards. The same overall (source) energy savings could be achieved using Design Energy Budgets expressed in terms of any weighting factors; the selection of the Energy Budget Levels is separate from the selection of the weighting factors. However, the choice of weighting factors will influence the mix of fuel types saved.

#### Request for Public Comment

Public comment is sought on the approach taken to establish weighting factors for the different fuels. There are four issues where public comment would be especially useful to DOE:

- The use of average prices instead of replacement costs in setting weighting factors.

- The use of national, regional, state, or local prices in setting weighting factors.

- The appropriateness of the choice of applying DOE's price premium for gas and oil in setting weighting factors.

- The overall utility of the weighting factor approach as presently proposed by DOE.

For additional details on the derivation and use of weighting factors, see Technical Support Document No. 4, Weighting Factors.

#### 2.4.2 Renewable Sources of Energy

This section addresses the issue of how the proposed rule may increase the use of nondepletable sources of energy.

Nondepletable energy technologies include active and passive solar systems, certain systems for generating electricity, and systems using biomass for fuel. Such systems may provide energy for space heating and domestic hot water, space cooling, and natural lighting.

In this section, five renewable energy systems are discussed: active solar space heating; passive solar space heating; active solar domestic hot water heating; natural lighting; and wood burning stoves. Other renewable energy systems for which there are ongoing research, design and development activities, include: photovoltaics; wind energy conversion; biomass conversion; and active or passive solar cooling. Such systems were not considered for this proposed rule.

A part of DOE's research program in support of the Standards has been an ongoing analysis of the role of solar energy systems as a source of heat for use in buildings. At the present time, the main types of economically competitive renewable energy systems that can supply a building with heat for space conditioning and domestic hot water are: active solar energy systems, passive solar features in the designs of buildings, and wood burning stoves. DOE commissioned research and analysis to assess the effects of the proposed Standards on the use of active and passive solar energy systems in building designs. Work on wood burning stoves in conjunction with the Standards is just beginning. The results of the solar studies are found in Technical Support Document No. 9, Passive and Active Solar Heating Analysis, and in Appendix A of Technical Support Document No. 8, Economic Analysis. Although these studies are ongoing and have not arrived at final results, DOE is able to indicate in a general way the main thrust of the impact of its proposed rule

on the use of renewable resources in buildings.

#### Research Results

A number of general conclusions about the potential role of solar energy systems in buildings can be derived from the analysis reported in Technical Support Document No. 9, Active and Passive Solar Heating Analysis, and from a wide range of other analyses underway in DOE's research, development and commercialization program for active and passive solar heating and cooling of buildings. The conclusions are:

- Passive and active solar energy systems do provide a viable option for achieving the Design Energy Budgets of single-family residential buildings.

- For specific buildings using different fuel types in various climates, there is a mix of conventional conservation techniques passive solar, and active solar systems that will maximize the economic and energy goals of the space conditioning system.

- Even when passive and active solar energy systems achieve an economic advantage over competing space heating systems (in terms of life-cycle cost to the homeowner), the incentive for builders to incorporate solar systems may be lacking. This is especially likely where the solar systems involve greater first costs than other ways of supplying heat or reducing demand for space heating. While significant energy savings can be realized from the use of active and passive solar energy systems, the rate at which builders incorporate solar design options will depend on a wide range of economic, institutional and legal factors.

- As part of commercial building life-cycle cost analyses in support of the Standards, DOE has begun to evaluate the use of passive solar energy design in commercial office buildings. This passive solar evaluation has focused on the use of natural lighting to reduce the energy required for artificial lighting. Artificial lighting can account for 40% to 60% of the design energy requirements of thermally efficient office buildings. No firm results are available from this study.<sup>42</sup>

#### DOE's Decisions

In the following ways, DOE took cognizance of its research findings on renewable energy systems and of the Congressional mandate to foster the use of renewable energy resources in the proposed Standards:

<sup>42</sup>AIA Research Corporation, "Life Cycle Cost Study of Commercial Buildings" (draft) (October 1979).

- Energy supplied by solar energy systems is not included in the calculation of the Design Energy Consumption of a building. Effectively, building designs receive a credit for the energy requirements supplied by solar energy systems. That is, a building design may use as little or as much solar energy as the design allows. Thus, this energy is available to reduce the requirements for nonrenewable fuels, making it easier to achieve the Design Energy Budget of the building design with conventional conservation measures.

- In the ANOPR, domestic hot water heating was not included in the design energy requirements for a single-family residence. For the proposed rule, domestic hot water heating is included in the Design Energy Budget of a single-family residence, in part because its inclusion is likely to encourage the use of active solar domestic hot water heating. Under the proposed Standards, the benefit to the home owner or occupant of installing an active solar domestic hot water heater is that it becomes easier to achieve the Design Energy Budget. This is because that part of the domestic hot water heating requirement met by the active solar system is not included in the Design Energy Consumption. In short, the inclusion of domestic hot water in the Design Energy Budget provides a significant incentive for the use of active solar domestic hot water systems over and above already existing incentives.

The issue of encouraging the use of passive solar designs is a more difficult one. The research findings for single-family residents show that such designs are already economically competitive with electric heating in many areas of the Nation, and in some cases with natural gas heating. However, they have not yet achieved widespread acceptance by the design community or the building industry.

DOE believes that the most significant way to encourage building designers to use passive solar design techniques is through an education program informing them of benefits of such techniques and of methods for using them in building designs. The research and publications done in conjunction with the Standards can play a major role in this education process by demonstrating the many opportunities that designers have to use passive solar techniques to meet the Standards.

DOE intends to accomplish this task by widely publicizing its research findings and by assisting the States in implementing the Standards in a manner that effectively informs the building community how passive solar

approaches may be used to meet the Standards and, in many cases, reduce costs to the building occupant at the same time. DOE intends to support the development of a Manual of Recommended Practice that will aid building designers and building code officials in understanding a variety of ways in which building designers can comply with the Standards. This Manual of Recommended Practice will include illustrations of passive and active solar designs that can be combined with appropriate conventional conservation measures to produce building designs to meet the Standards.

An additional way in which the Standards may encourage the use of passive solar concepts stems from the selection of the life-cycle cost minimum points as the basis of the Energy Budget Levels for single-family residential buildings. Because these Energy Budget Levels require designers to increase their use of energy conservation beyond common practice, the proposed Standards would encourage the building community to seek new ways of conserving energy that are more cost effective than traditional measures. In this environment in which energy conservation is a requirement, the innovative designer who realizes the potential benefits of passive solar design may have an opportunity to achieve a competitive advantage over designs using traditional techniques only. As noted, the Manual of Recommended Practice will strive to make these opportunities clear to the design community.

#### Ongoing Research

DOE is continuing its research efforts to gather as much information as possible on ways that solar and other renewable energy systems can meet common economic and energy goals in meeting the Standards. The research effort is also directed at increasing the capability of the Standard Evaluation Technique to analyze renewable energy systems (see Technical Support Document No. 8, Economic Analysis). This research effort is integrated with DOE's ongoing research, development, and commercialization programs for renewable energy systems. This effort includes:

- Development of an element of the Standard Evaluation Technique that treats renewable energy systems not presently included (e.g., wood burning stoves).

- Refinement of the elements of the Standard Evaluation Technique that treat active and passive solar energy systems.

- Continuation of the analysis of passive solar designs for commercial buildings.

- Continued support of analyses for the Manual of Recommended Practice, including evaluation of performance and cost tradeoffs among passive solar designs, active solar systems, and conventional and innovative energy conservation measures in buildings.

- Development of a longer term strategy for updating the Standards in a manner responsive to advances in the state of the art of renewable energy systems.

#### Request for Public Comment

DOE invites comments on additional ways in which the promulgation of the Standards can serve to encourage the use of renewable sources of energy. In particular, DOE requests public comment on the performance, costs, and availability of innovative methods for reducing the energy consumption of buildings, including innovative ways of using renewable energy resources for this purpose. DOE also requests suggestions on the most effective methods for informing the design and building communities of the opportunities to use passive and active solar and other renewable energy systems to meet the Standards.

#### 2.4.3 Building Design Classifications

##### Purpose and Scope of the Research

It is necessary to determine clearly and precisely which building designs are subject to which Energy Budget Levels. Some designs present no difficulties (a single-purpose small office building, or a nursing home); others do (a large multifunctional office building containing significant amounts of retail and restaurant space). During Phases 1 and 2, initial building classification systems were developed and surveys were conducted of the energy-related design criteria found in various codes and standards.<sup>43</sup> Also, DOE analyzed the range of functional areas contained in the Phase 2 data base to determine representative distributions for each building classification.<sup>44</sup> The definitions contained in the proposed rule are based on this research.

<sup>43</sup> U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Building Classification" (Jan. 1978), and The Ehrenkrantz Group, "Final Report on the Survey of Codes, Regulations and Standards" (Mar. 1978) and "Draft Survey of Codes, Regulations and Standards" (Apr. 1978).

<sup>44</sup> Brookhaven National Laboratories, "The Mix of Functional Areas Within Phase Two Building" (May 1979).

## Definition of Issues

The two principal issues involved were:

- Defining building classifications in a manner that would provide clear, unambiguous guidance to users of the Standards.
- Providing a practical mechanism for treating building designs that clearly do not fit within any single classification.

## Public Comment on ANOPR

There were two areas of comment to the ANOPR dealing with the issue of building classifications: (1) Comments urging expansion of the number of classifications; and (2) comments encouraging an alternative method of classifying buildings by "functions."

Ten comments concerned the classifications of commercial buildings. The grocery industry objected to inclusion of supermarkets with other mercantile buildings. The industry claimed supermarkets have unique additional energy demands for food preservation. Representatives of retail shopping centers also recommended a separate classification, observing that unique display lighting needs necessitated additional electrical hookups that must be included in the building design to allow for more flexible use of store areas.

Representatives from the industrial sector indicated that the "industrial building" classification encompassed too broad a range of buildings. Hotel and motel industry comments observed that the "hotel and motel" classification contained buildings of vastly different character and purpose. School, college and university groups questioned the wisdom of expecting, say, a chemistry laboratory or swimming pool to have the same Design Energy Budget as a classroom or office building. Finally, two comments suggested that no Design Energy Budgets be set for unusual or infrequently built buildings.

A number of comments criticized the classification scheme for ignoring the fact that many buildings service a variety of functional areas. For example, an office building may contain retail, assembly, restaurant and clinic uses. The comments advocated an application of the building block approach. The representatives of hotels and motels, retail shopping centers and owners of multipurpose buildings were the strongest proponents of this approach.

## Work Performed

DOE examined commercial and multifamily residential building designs

contained in the Phase 2 research sample and did the following:

1. Identified all functional areas that had been classified in the original Phase 2 research.
2. Assigned areas within each building design in the sample to the appropriate functional classifications.
3. Determined averages and standard deviations for different building functional areas within each building classification.
4. Grouped functions found to have relatively low standard deviations into a single "related purposes" functional classification unique to each building classification, based on consideration of averages and allowances for standard deviations.

DOE also analyzed the results of the single-family residential building sample to establish prototype designs for such buildings. Four prototypes were selected: single-story, two-story and split-level detached, and two-story attached. These four prototypes, described in Technical Support Documents No. 8, Economic Analysis, were analyzed for: (1) Thermal performance, and (2) cost-effectiveness of energy conservation measures.

## Alternatives Considered and the Alternative Chosen for the NOPR

Two basic classification alternatives for commercial and multifamily residential buildings were considered: (1) Classifications and definitions based on whole-building functions; or (2) classifications and definitions based on individual functions contained within buildings. The proposed rule in Appendix I provides that, where a building design meets the requirements of a building classification, the Energy Budget Level becomes the Design Energy Budget. For a multiuse commercial building, a functional approach is used. The Design Energy Budget is based upon the relative areas of the functions present in the building design. This approach is used only if Energy Budget Levels can be assigned to at least 50% of the gross area of the building design. If Energy Budget Levels cannot be assigned to 50% of the gross area, the building is not subject to the Standards. DOE seeks comments on whether the Design Energy Budget should instead be applied only to those areas of the building design to which Energy Budget Levels have been assigned.

For single-family residential buildings, the classification procedure is simpler because there is less difficulty differentiating between attached and detached houses. From the research conducted, no significant differences

were observed in the design energy requirements for three different prototype designs (one-story, two-story and split-level detached) as reported in Technical Support Document No. 8, Economic Analysis. As a result, DOE has included only two prototypes in the proposed rule: Attached and detached. Research is continuing in order to assess the design energy requirements of additional prototypes: residences with heated basements and residences attached on only one side.

## Specific Impact on Proposed Rule

Based on the research, DOE developed the classifications and definitions contained in proposed § 435.04, as well as the exceptions procedure for multifunction buildings, contained in Appendix I.

## Ongoing Research

Because the Phases 1 and 2 data were not sufficient to resolve all issues for a building block approach, further research is planned. The analysis will also provide DOE with an improved understanding of the effects of the interaction of building functions on Design Energy Consumption.

## Request for Public Comment

DOE is interested in public response to its proposed classification scheme for commercial, multifamily residential and single-family residential buildings. DOE requests comments and data indicating (1) the fraction of building types that fit into different functions, and (2) the degree to which alternative classification schemes can facilitate the implementation of the Standards.

## 2.4.4 Standard Building Operating Conditions

### Definition of the Issues

For each building classification, certain standard building operating conditions are provided to assure that the same conditions of use and occupancy will be used to evaluate the Design Energy Consumption. These standard conditions describe: Hours of operation; indoor temperatures to be maintained; human occupancy densities; and usage profiles for artificial lighting, domestic hot water, elevators, escalators and other energy consuming equipment. These conditions affect Design Energy Consumption to varying degrees, depending on the building type, location, design characteristics, and energy using equipment.

In the development of the proposed Standards, these operating conditions were used in the AXCESS program for commercial and multifamily residential

buildings, and the DOE-2 program for single-family residences. Many of these conditions were assumed or were developed to represent typical values and then used in the research, to introduce consistency in building use for buildings of the same type.<sup>45</sup>

They are also required in the Standard Evaluation Technique used to determine Design Energy Consumption, where they are referred to as Standard Building Operating Conditions.

#### Public Comments on ANOPR

Many comments concerning operating conditions were received in response to the ANOPR. Several colleges and universities observed that the suggested Standard Building Operating Conditions were not adequate for colleges which have variable occupancy throughout the day, as well as evening programs. They commented that, as a result, college and university energy requirements differ significantly from primary and secondary educational institutions.

In addition, comments relating to the grocery industry proposed that special provisions be made to account for their unique operating conditions. Unlike other retail stores, grocery stores cannot switch off energy consuming equipment (e.g., refrigerators) when the store closes its business day.

The shopping center industry also commented that their operating conditions were distinctive and were not correctly described in the ANOPR. Finally, one isolated comment observed that the "intensity" of use of a building, i.e., the location of people in the building, as well as what those people are doing, is a key consideration. This comment cautioned that too much reliance on a daily occupancy profile, at the expense of the expected intensity of use, could result in a Design Energy Budget having a poor relationship to the actual energy use of the building.

#### DOE's Proposed Approach

DOE's approach to identifying a method of using Standard Building Operating Conditions with the Standard Evaluation Technique addresses the public comments made in response to the ANOPR and was developed after examining the following three alternatives:

- No standardization, where designers may use any conditions they choose.

- Boundary conditions, which standardize conditions within a fixed range.

- Exact specification, where conditions are set as fixed parameters.

DOE chose to require the exact specification of Standard Building Operating Conditions because the nature and intensity of energy use may vary widely over the useful life of a building.

However, because the Standards are design standards, the Standard Building Operating Conditions are applied to the design. This provides consistency in evaluating building performance, even though two similar buildings in actual operation may be used very differently, with resulting differences in energy use.

To assess a building's Design Energy Consumption fairly, DOE chose to use the operating conditions resulting from the Phases 1 and 2 analyses. The proposed Standard Building Operating Conditions for commercial and multifamily residential buildings (see Technical Support Document No. 5, Standard Building Operating Conditions) thus reflect the averages of designers' estimates of reasonable operating conditions for buildings and for major uses within the buildings. For single-family residential buildings, the conditions reflect the typical conditions indicative of assumed current use practices (see Technical Support Document No. 8, Economic Analysis).

The Standard Building Operating Conditions have been developed in sufficient detail to reflect variations in the mix of uses within a given building type. This level of detail permits variations in occupancy density and hours of use in different parts of a building with different functions; for example, a secondary school containing classrooms, offices, a cafeteria and a gymnasium. Also, since process energy requirements are not included in the proposed rule, special operating conditions are not necessary for process equipment which must remain on even when a building is unoccupied.

In developing the Standard Building Operating Conditions, DOE determined that they should be based on average current practice, to make the conditions used for design evaluation consistent with anticipated typical building design energy calculations. Further, DOE determined that, insofar as possible, the Standard Building Operating Conditions should not depend on user-oriented devices such as manually operated, movable insulation on windows. The use of such user-operated devices and

the energy reductions that are dependent on them cannot be anticipated with sufficient certainty at the building design stage to permit their incorporation into the Standard Building Operating Conditions for the proposed Standards. As empirical data becomes available, DOE may amend the Standards to give credit for the use of such energy conserving design features.

#### Request for Public Comment

DOE invites public comment on the proposed Standard Building Operating Conditions, especially in regard to their use in conjunction with the Standard Evaluation Technique.

#### 2.4.5 Climate

The Act calls for the Standards to reflect the impact of climate variation (Section 304(b)). Design Energy Budget and Design Energy Consumption will vary from location to location to reflect such climate variations. The purpose of this section of the preamble is to describe the research activities which enabled the climatic variations to be included in the structure of the proposed Standards.

#### Initial Climate Research, Phases 1 and 2

To determine appropriate relationships between climate variation and building design energy requirements, the relative effects of the elements of climate had to be correlated to design energy requirements data. Such a correlation was not sufficiently developed prior to Phase 1. The initial climate classification system was developed for research purposes only, for regional climate stratification for the selection of building samples, and for data analysis and presentation.

For Phase 1, an initial system of eight regions was developed, based on combinations of heating degree-days (65 °F base) and cooling degree-hours (85 °F base). This system was refined to a seven-region system using heating and cooling degree-days (85 °F base) (see Technical Support Document No. 10, Climate Classification Analysis). This seven-region system was used for analysis purposes throughout Phases 1 and 2.

The initial climate research in Phase 1 examined other existing climate classification systems for their applicability. In Phase 2, an analysis was begun to correlate the impact of climate variables on the design energy requirements results of the Phase 1 base data. However, the results of this analysis were not sufficiently developed by the end of Phase 2 to refine the relationship between climate and building design energy requirements

<sup>45</sup> See Technical Support Document No. 8, Economic Analysis, for their use in single-family residential analysis; Technical Support Document No. 1, The Standard Evaluation Technique, for their use in commercial and multifamily residential buildings; Technical Support Document No. 5, Standard Building Operating Conditions; and footnotes 12 and 14, for a more complete explanation.

beyond the seven-region system used for data analysis.

#### The ANOPR

The ANOPR suggested the use of the seven climate zones for commercial and multifamily residential buildings. It also suggested three zones for mobile homes because a different methodology was used from that in commercial and multifamily residential buildings. No zones were specified for single-family residences because a procedure using the NAHB Thermal Performance Guidelines was suggested.

#### Public Response to the ANOPR

Twenty-three comments suggested improvements to the climate analysis and approach presented in the ANOPR.

Eleven comments criticized the use of only seven climatic zones, because the fluctuations in local temperature within each zone create divergent energy requirements. Some comments urged the use of more localized weather zones. Others suggested that degree-days at each specific building site be used in place of climate zones. One comment urged that zones be established for each location for which hourly readings in 5° ranges are available. Seventeen comments indicated a need to adjust climate for factors other than heating and cooling degree-days. These comments advocated consideration of additional climate factors, including relative humidity, wind conditions, and solar radiation. Other comments also urged consideration of specific variables, such as dewpoint, micropressure differences, shade, earth radiation penetration, site orientation, topography, groundwater location, wet bulb temperature, and cloud cover effects.

#### DOE's Response and Decisions

As explained in Technical Support Document No. 10, Climate Classification Analysis, DOE's approach to climate takes account of these comments. The proposed Energy Budget Levels are displayed for 78 SMSA's and cities. A procedure is outlined whereby any location in the United States can be related, either by proximity or by similarity in weather characteristics, to one or more of these 78 SMSA's and cities. Thus, the proposed approach to climate variations effectively divides the Nation into 78 noncontiguous climate locations and provides Energy Budget Levels for each of these locations. The proposed approach includes a procedure for selecting one of the 78 locations for those cases where a building site is not located within one of the SMSA's or cities listed.

The approach described above resulted from three separate activities commissioned by DOE.

Two independent studies of climate impacts of commercial and multifamily residential buildings were undertaken. Both studies used the Phase 1 descriptions of the commercial and multifamily residential buildings. The studies used statistical techniques, including regression analyses, to develop the relationships between a number of weather variables and the design energy requirements for the sample buildings. The results had been produced in Phase 1, using the short form of the AXCESS computer program and hourly weather data for a representative day for each month of the year.

The first study used classical statistical analyses applied to average energy use figures for each building type by SMSA or city. Atypical or extreme values were deleted from the sample in this analysis because it was felt that such extremes reflected architectural characteristics not germane to the climate analysis. The results of this analysis showed a good correlation, by building type, of energy use as a function of heating and cooling degree-days.

The second study performed a statistical analysis on the entire Phase 1 sample, disaggregated only by SMSA or city, without regard to building type. The results of this study also showed good correlation between energy use of the aggregated Phase 1 building sample and heating and cooling degree-days.

However, both studies were in agreement that there was a need to change the traditional temperature base from which heating and cooling degree-days were calculated.

Also, both analyses examined other weather variables, including solar radiation and humidity. However, these variables did not explain the regional variations in design energy requirements as well as heating and cooling degree-days, nor did they substantially add to the results provided by the heating and cooling degree-day analyses. DOE therefore decided to use degree-day based variables in setting Energy Budget Levels for commercial and multifamily residential buildings.

Both studies further concluded that additional climate analysis using the Phase 1 data would be unproductive due to the city-to-city and building-to-building variability in the data base.

In addition to the proposed climate approach using 78 SMSA's and cities, the first study and additional statistical work in progress have produced results which potentially permit the

presentation of climate variation relative to Energy Budget Levels in a more general format. This format is a matrix relating different levels of heating degree-days and cooling degree-days to Energy Budget Levels. Such a format has the potential for: (1) Permitting a Design Energy Budget to be determined directly for any location for which appropriate weather data is available from which to determine heating and cooling degree-days; and (2) applying climate data other than Test-Reference Year (TRY) data for determining Design Energy Budgets and Design Energy Consumption.

For single-family residences, a third study was conducted. This study was based on a previous analysis of climate impacts on residential design energy requirements,<sup>46</sup> and on the climate analyses for commercial and multifamily residential buildings. The study examined the impact of climate on the single-family residential prototypes theoretically placed in 10 cities using computer simulation.

This data was used with the residential life-cycle cost analysis to determine the proposed single-family residential Energy Budget Levels for the 78 SMSA's and cities. The results of this study also determined that heating and cooling degree-days, at the same degree-day temperature bases developed from the climate analyses for commercial and multifamily residential buildings, were reasonable for reflecting the location-to-location variation in design energy requirements due to climate.

As part of its ongoing efforts to verify and improve upon the existing research, DOE is considering the development of a representative set of prototypical commercial and multifamily residential building designs to be analyzed for energy and lifecycle costs in differing climates. For single-family residential buildings, DOE is considering further climate research to examine the effects of hour-by-hour climate changes and other climate factors on a set of building prototypes.

#### Request for Public Comment

DOE is interested in public comment in the following areas:

- The effect of local climatology on building design energy requirements.
- The use of available climate data and its format.

<sup>46</sup>"Geographical Variation in the Heating and Cooling Requirements of a Typical Single-Family House. Using Both Test Reference Year (TRY) and Long-Term Weather Data, and Correlation of These Requirements to Degree Days." U.S. Department of Commerce (June 1977).

- Identification and quantification of regional building construction and design practices.
- Identification of alternative climate analysis approaches for the evaluations techniques.

#### 2.4.6 Unit of Measure for Design Energy Budgets

An important element of the proposed Standards is the unit of measure for displaying the Design Energy Budgets. The major question is whether MBtu/sq. ft./yr, as proposed in the ANOPR, is the appropriate unit for the Design Energy Budgets.

#### Public Comment on the ANOPR

The majority of comments received raised no objection to the use of MBtu/sq. ft./yr, but requested further definition and clarification of the reasons for this unit of measure.

Ten comments made suggestions for improving the format of the Design Energy Budgets. Three comments indicated that MBtu/sq. ft./yr required a better definition. Other comments suggested alternative units of measure, such as MBtu/cubic ft./yr (to eliminate the variable of building height) and MBtu/gross conditioned sq. ft./yr. Some thought the unit of measure should be tailored to the building's use; for example, MBtu/bed/yr for hospitals with in-patient care. Still another comment advocated that the unit of measure be tied into an "energy price index."

A second group of comments suggested alternative approaches to the Design Energy Budget. One comment was to use component level budgets. Some comments encouraged the breakdown of the Design Energy Budget into component parts, identifying the precise budgets for HVAC, electricity, domestic hot water, etc. The rationale presented was that a designer needed more specific guidelines.

The last category of comments on the unit of measure indicated that MBtu/sq. ft./yr was impractical or should not be used because there were too many variables which were not adequately considered (i.e., design, tenant mix, function, location, and climate).

#### DOE's Response and Decisions

DOE is proposing the use of MBtu/sq. ft./yr. This unit of measure and its application are precisely defined in the proposed rule. DOE's analysis subsequent to the ANOPR indicates that, while other parameters may be appropriate for certain building types, the proposed unit of measure provides consistent results for all building types. Possibly, Btu/cubic ft./yr would produce

consistent results for certain buildings like warehouses. However, DOE has no evidence that such a change would produce better results. Similarly, the use of units of measure tailored to a specific building type (Btu/bed/yr for hospitals) introduces considerable, possibly burdensome, complexity.

The use of MBtu/gross conditioned sq. ft./yr would also introduce additional complexity. For example, this format would make it difficult to account for the lighting energy requirements for nonconditioned spaces.

The specification of separate component Design Energy Budgets may provide more specific guidelines for designers, but may eliminate the use of effective or innovative energy conserving design concepts where tradeoff between components can be used to an advantage. For example, suppose such component Design Energy Budgets existed and a particular building design just met the budgets for both heating, ventilating and air-conditioning (HVAC) and lighting. Suppose also that the designer had a potential design strategy that would save an additional 5 MBtu/sq. ft./yr for lighting but, because of the decreased heat available from the lighting system, would increase the net energy for the HVAC by 1 MBtu/sq. ft./yr. That design strategy would reduce energy for the total building design by 4 MBtu/sq. ft./yr, but the HVAC budget would be exceeded. The increased specificity of the component budget would have restricted the application of an effective overall energy conservation strategy that would trade off increased efficiency in one building system (lighting) for a smaller decreased efficiency in another system (HVAC).

DOE agrees with the comments that the inclusion of energy for domestic hot water in the Design Energy Budget for single-family residences is appropriate because domestic hot water often represents a major energy requirement. Moreover, because of uncertainty in the data on domestic hot water use, DOE will continue its research activities to improve its estimates of domestic hot water contributions to the Design Energy Consumption.

DOE's analysis indicates that domestic hot water use is relatively constant with respect to single-family building size. As such, DOE proposes that the domestic hot water factor of the Design Energy Budget for single-family residences be based on MBtu/yr per single-family unit. This approach encourages the use of solar and other innovative domestic hot water systems as an alternative, with a tradeoff of less stringent thermal integrity in the shell of

the building. DOE is particularly interested in comments on this attribute of the proposed rule.

### 3.0 Selection of the Proposed Energy Budget Levels

#### 3.1 Introduction

DOE considered and evaluated relevant technical and economic information and expert opinion available to it in selecting the proposed Energy Budget Levels (see Technical Support Document No. 3, Energy Budget Levels Selection). DOE determined that the Energy Budget Levels selected should accelerate the use of energy conserving and renewable resource technologies to the maximum extent practicable beyond the level of existing practice and should establish levels of performance achievable by designers through the use of commercially available technology.

DOE analyzed the effects of alternative Energy Budget Levels as a means of focusing its procedure for their selection. These alternative levels were set using the results of the sensitivity analysis of the most critical assumptions, such as fuel prices, stringency of existing energy codes and capital costs (see Technical Support Document No. 8, Economic Analysis). In this manner, the range of possible Energy Budget Levels established a zone of confidence for unanticipated changes in such key assumptions.

DOE's selection of the proposed Energy Budget Levels was not a result of any one analysis, but an informed judgment based on all available information.

An important source of information for the commercial and multifamily residential buildings was the data and information assembled in Phases 1 and 2, including the Phase 2 redesign data (see Section 2.0). This information was supplemented by the analysis of the costs and benefits to the Nation of possible alternative Energy Budget Levels. Added to these considerations were technical, policy, practicability and environmental concerns. DOE also considered the professional judgment of Federal building energy experts who were requested to comment on the alternative design energy requirement levels considered by DOE in selecting the proposed Energy Budget Levels.

For the proposed single-family residential Energy Budget Levels, an important information source was the life-cycle cost analysis conducted for four prototype designs theoretically placed in ten cities representative of varying climate conditions around the country. Additional information was

considered, including the availability of certain conservation technologies, possible detrimental health effects, and a wide range of technical and policy considerations.

The following sections describe the most important information considered in the selection of the proposed Energy Budget Levels for commercial, multifamily residential and single-family residential buildings. Additional information can be found in Technical Support Document No. 3, Energy Budget Levels Selection.

### 3.2 Commercial and Multifamily Residential Buildings

As noted, DOE considered a number of sources of information in its selection of the proposed Energy Budget Levels for commercial and multifamily residential buildings. A major resource was the analysis of the information assembled in the Phases 1 and 2 research effort. The major factors explicitly considered in DOE's determination of the proposed Energy Budget Levels for commercial and multifamily residential buildings are discussed in sequence in Sections 3.2.1 through 3.2.7 below. These factors are: (1) Expert judgment of Federal officials who administer the design of Federal buildings; (2) economic impacts of alternative possible Energy Budget Levels; (3) practicability of designing buildings to achieve the proposed Energy Budget Levels; (4) level of confidence in the statistical sample of buildings analyzed; (5) technical considerations relating to the accuracy of estimating the energy use of specific building types; (6) health and safety impacts of alternative Energy Budget Levels; and (7) mechanisms available to the Federal Government to encourage strict levels in particular building types.

To provide a framework for evaluating different possible levels of design energy requirements for different types of commercial and multifamily residential buildings, DOE has considered three levels of stringency based on the fraction of redesigns that could achieve a specified level of design energy requirement (see Section 2.0). The three levels of stringency are defined as follows:

- $R_{30}$  means that 30% of all building redesigns for that building type achieved that level of design energy requirement or lower. This level is termed "strict."
- $R_{50}$  means that 50% of the redesigns for that building type achieved that level of design energy requirement or lower. This level is termed "nominal."
- $R_{70}$  means that 70% of the redesigns of that building type achieved that level

of design energy requirement or lower. This level is termed "lenient."

For example, the design energy requirement estimates for a large office building in Kansas City, and SMSA selected as representative of a mid-range of climate conditions, were:

$R_{30}$ : 48 MBtu/sq. ft./yr  
 $R_{50}$ : 49 MBtu/sq. ft./yr  
 $R_{70}$ : 51 MBtu/sq. ft./yr

The proposed Energy Budget Levels were derived by applying weighting factors to these design energy requirements, as discussed in Section 2.4.1. DOE's considerations in the Energy Budget Levels selection process for commercial and multifamily residential buildings are discussed in the following paragraphs.

#### 3.2.1. Expert Judgement

An independent review of  $R_{30}$  was conducted by building energy experts from HUD, the Corps of Engineers the National Aeronautics and Space Administration, the National Bureau of Standards, the Department of Defense, the Veterans Administration, and the Department of Health, Education and Welfare. The individuals involved were Federal officials experienced in the administration of the design of energy conserving Federal buildings. They were asked if, based on their experience, they could expect buildings to be designed which could meet the  $R_{30}$  level of design energy requirement, or more stringent levels. Their consensus was that the  $R_{30}$  levels of design energy requirements could be met, but they felt that these were very strict. Also, there was concern about possible undesirable increases in first cost and design time.

#### 3.2.2 National Economic and Energy Impacts

The net present value to the Nation and the energy savings were estimated for three different levels of design energy requirements: lenient, nominal and strict. An extensive set of analyses was performed to evaluate the degree to which estimated economic impacts depended on the assumptions of energy costs and escalation rates, conservation costs, and other key variables (see Technical Support Document No. 3, Economic Analysis). The results indicated that, for almost all sensitivity cases considered, the net present value to the Nation of the proposed Energy Budget Levels was greatest for the strict case and lowest for the lenient case. Thus, national economic benefits are greatest for the more strict levels.

#### 3.2.3. Practicability

This consideration included qualitative assessments by DOE of the practicability of designers being able to achieve energy conservation levels significantly more stringent than current practice. DOE has identified many instances where it appeared that designers would experience difficulty in reaching the strict range of design energy requirements, in spite of the apparent national cost-effectiveness of such levels. DOE believes that a major constraint in the designs of more energy-efficient commercial and multifamily residential buildings is not technology or costs but the unfamiliarity of design professionals with energy-efficient design strategies and available technology. DOE believes that this aspect of practicability is a strong deterrent against very strict Energy Budget Levels, at this time.

DOE has carefully evaluated the preliminary results of a life-cycle cost study of large office buildings.<sup>47</sup> This study suggests that there are designs that are economically beneficial at design energy requirement levels more stringent than those achieved by most of the redesigns in Phase 2. Again, however, the unfamiliarity of the design community with energy-efficient design strategies that would produce designs that would meet these stringent levels is an important consideration against setting levels that are too strict.

#### 3.2.4 Confidence in the Samples Selected

Confidence in the sample was evaluated qualitatively in terms of three factors for each building type: Sample size, variability, and regionality problems. For example, for two building types, hospitals and multifamily low-rise residences, there was less confidence in the representativeness of the sample than for other building types.

#### 3.2.5 Technical Considerations

These included qualitative assessments of: (1) Process loads (the difficulty of separating process energy from other energy uses in calculating design energy requirement), and (2) evaluation technique capabilities for calculating design energy requirements for each building type. For example, the amount of process energy used for restaurant kitchens is generally much greater than the energy used for space conditioning in those buildings. DOE is considering research to develop an approach for studying the interactions

<sup>47</sup> AIA Research Corporation, "Life Cycle Cost Study of Commercial Buildings" (draft) (October 1979).

between process energy requirements and design energy requirements for space heating and cooling, lighting, ventilation, domestic hot water and elevators and escalators, all of which support human occupancy.

The proposed rule also contains no proposed Energy Budget Levels for two building classifications, restaurants and industrial buildings, because of the difficulties of separating process energy from other energy uses. DOE is considering further research to identify the non-process energy related design energy requirements of different types of restaurants and industrial buildings.

### 3.2.6 Health and Safety Considerations

The major health and safety issue of the proposed Standards identified in the Draft Environmental Impact Statement (Technical Support Document No. 7), is the potential impact of reduced rates of ventilation or air infiltration on indoor air quality. As discussed in Section 2.3.1, all of the proposed Energy Budget Levels can be achieved without any change in ventilation or air infiltration of commercial or multifamily residential buildings. Furthermore, the Standard Evaluation Technique (Section 4.0) is formulated so that it gives no credit for ventilation or air infiltration levels below current practice and the local requirements that are meant to protect the public health and safety.

Thus, under the proposed rule, the indoor air quality is not expected to change, regardless of whether the Energy Budget Levels are set at lenient, nominal, or strict rates.

### 3.2.7 Influence of Federal Government on Building Design

This included the potential of the Federal Government to influence construction practice for projects that receive substantial Federal funding, such as schools and hospitals. This potential could be developed by providing technical assistance to the designers of such buildings or by requiring energy efficient designs as a condition of Federal funding. This factor did not have a major role at this time because the mechanisms for exerting this influence have not yet been established and because of the particular concern about interior air quality in the two building types that would be affected, schools and hospitals.

### 3.2.8 Overall Assessment

Based upon the combined qualitative assessment of all of the above considerations for each building type, the following proposed Energy Budget Levels were selected.

- Large and small office buildings: R<sub>30</sub>.
- Hospitals and multifamily low-rise residential buildings: R<sub>70</sub>.
- All other commercial and multifamily residential buildings: R<sub>50</sub>.

### 3.2.9 Component Performance Standards: Comparisons and Potential Equivalency

As noted in Section 2.2, impacts on design energy requirements of the proposed component performance standard ASHRAE 90-75R (November 1977) and the draft version (April 1978) of the HUD Minimum Property Standards were analyzed using the Phase 2 commercial and multifamily residential sample buildings. Applying the minimum requirements of the HUD standards to the multifamily residential buildings resulted in average design energy reductions in the range of 7% to 11% from 1975-1976 practice. The design energy reductions produced by the proposed Energy Budget Levels from 1975-1976 for these buildings types in more than two times as much as the reduction projected from the HUD standards.

The preliminary results of the analysis of the ASHRAE 90-75R component performance standard are available at this time for the Phase 2 small office building sample only. These results indicate that the minimum requirements of ASHRAE 90-75R, for those small office buildings, produce a design energy reduction from 1975-1976 practice of about one-half of the design energy reduction level of the small office building redesigns.

In addition, DOE has initiated preliminary analyses toward determining potential "equivalency" between a standard based on ASHRAE 90-75R and the proposed Energy Budget Levels. Changes were made to each relevant section of the ASHRAE standard to increase its stringency. Then, energy calculations were made which reflected the impacts of the more stringent measures. Those energy calculations were made for the Phase 2 sample of small office buildings and warehouses. The preliminary results of the more stringent component requirements based on ASHRAE 90-75R produced average design energy requirement levels within 2 percent of the redesign levels for each of the two building types.<sup>48</sup> The changes made to increase stringency are currently being evaluated by DOE for technical feasibility and practicability.

<sup>48</sup>ALA Research Corporation Memorandum, "Preliminary Results of Potential Improvements to ASHRAE 90-75R to Determine Possible Equivalence to the Mean of the Phase 2 Redesign Buildings" (August 1979).

Also, DOE is initiating a more extensive program to develop measures of equivalency based on prototypical building designs.

### 3.3 Single-Family Residences

For single-family residences, DOE sought to select Energy Budget Levels that could be achieved using available conservation measures, would result in housing design changes that would be financially beneficial to the owner, would produce significant aggregate energy savings to the Nation, and would result in greater conservation than present energy standards or current practice.

The analysis conducted in support of DOE's selection of the proposed Energy Budget Levels first involved identifying currently used energy conservation measures and evaluating the cost and design energy requirements of using different combinations of these measures at different locations in the country. Ten cities were selected to represent a broad range of climates. For each city, four single-family residential prototypes were evaluated using different combinations of conservation measures and different fuel sources (gas, oil, and electricity). For each combination of conservation measures and fuel type, the analysis determined: (a) The life-cycle cost (i.e., the sum of (1) the future fuel costs discounted to the present, and (2) the investment in energy conservation measures above current practice), and (b) the design energy requirement for each prototype house.<sup>49</sup> This procedure made it possible to identify the combination of energy conservation measures that produced a minimum in the life-cycle cost. The procedure made it possible to identify the combination of energy conservation measures that produced a minimum in the life-cycle cost. The procedure also made possible the evaluation of the increase in life-cycle cost due to all other combinations of conservation measures for each of the fuel types.

DOE has decided to set the proposed single-family residential Energy Budget Levels at the minimum in life-cycle costs, as determined by the procedure outlined above. The basis and reasoning for this decision are discussed below.

<sup>49</sup>Life-cycle cost curves were generated by simulating the change in design energy requirements resulting from the addition of a series of energy conservation measures. The conservation measures were added in order of declining cost-effectiveness. Conservation measures included wall insulation (up to R-25), ceiling insulation (up to R-38), increased number of glazings on windows (up to three), and floor insulation (if a house had a crawl space.) Details are contained in Chapter 4 and Appendix A of Technical Support Document No. 8, Economic Analysis.

First, it is useful to recognize that there is considerable uncertainty regarding the precise identification of the life-cycle cost minimum. This uncertainty derives from a lack of complete information about local and regional variations in such factors as climate, energy prices, energy conservation costs, and "performance" of different energy conservation measures under a range of conditions and in houses that differ from the prototype designs used in the analysis. Therefore, the minimum life-cycle cost is more a range than a single point on the life-cycle cost curve.

The range is further broadened in some climates because several conservation measures near the minimum have approximately equal life-cycle costs. There is a regional pattern to the breadth of the minimum range on the life-cycle cost curve. In the colder climates, the life-cycle cost curve ends before a true minimum is reached and only unconventional conservation measures can further reduce energy use. In the warmest regions, for natural gas heated homes, additional conservation measures can be achieved at little additional cost. However, DOE is concerned that setting more stringent Energy Budget Levels than those at the life-cycle cost minima might have adverse impacts on the building industry, particularly in cold and moderate climate areas, during a transition period while the industry is adapting to the new Standards.

A number of analyses were undertaken to determine the effects upon life-cycle costs and energy requirements due to changes in the assumptions characterizing the prototype designs, conversation costs, energy prices and price escalation factors, and other variables of the analysis. Reports of these analyses are contained in Technical Support Document No. 8, Economic Analysis.

As a further step in establishing the practicability of the minimum life-cycle cost level, DOE conducted specific analyses to determine whether alternative conservation measures, not used to establish the life-cycle cost levels, could be used to meet the minimum level. In addition, DOE identified specific localities where there was some question as to whether the conservation measure used to establish the minimum point could be utilized. In these cases, DOE conducted analyses that indicated that alternative conservation measures could be utilized,

in lieu of the questionable measure, to meet the minimum levels.<sup>50</sup>

Once DOE was satisfied that the minimum life-cycle cost level was reasonable and achievable, DOE then analyzed a number of important issues to determine whether alternative design energy requirement levels, more or less restrictive than those based on the life-cycle cost minima, would be preferable for the proposed rule.

DOE evaluated four alternative levels in reaching its decision:

1. The minimum point on the life-cycle cost (LCC) curve (called the LCC minimum).
2. 10 percent tighter than the LCC minimum.
3. 20 percent tighter than the LCC minimum.
4. 25 percent to 30 percent looser than the LCC minimum (equivalent to the HUD Minimum Property Standards).

Each of these four alternatives was evaluated with respect to: (1) Energy savings to the Nation, (2) economic impacts on individuals and the Nation, (3) practicability of designing buildings to meet the levels indicated, (4) first-cost (i.e., increased initial investment) impacts, (5) environmental impacts, and (6) degree to which the levels would be likely to encourage the use of renewable energy systems. The results of the investigation of these factors are summarized below and are discussed in greater detail in Technical Support Document No. 3, Energy Budget Levels Selection.

### 3.3.1 Energy Savings

The cumulative energy savings during the time period 1980 to 2020 resulting from the four alternative levels have been estimated using the Oak Ridge National Laboratory Residential Energy Demand Model (see Technical Support Document No. 8, Economic Analysis). The estimated savings were:

- More than 11 quadrillion Btu's (quads) for alternative 1, the LCC minimum.
- About 14 quads for alternative 2.
- About 16.5 quads for alternative 3.
- About 4.5 quads for alternative 4.

DOE also investigated the energy savings associated with the first alternative under the assumption that the Energy Budget Levels were made stricter by future updating, justified by higher energy prices (in accord with DOE's estimates of increasing real prices of energy). The cumulative energy savings associated with the minimum LCC level was about 15 quads, 4 quads greater than that without updating. Thus, the energy savings for all of the

alternatives are underestimated if the Energy Budget Levels are made more strict through periodic updating.

### 3.3.2 Economic Impacts

The first three alternatives (minimum LCC, minimum LCC minus 10%, and minimum LCC minus 20%) were shown to have approximately equal and favorable economic impacts. Alternative 4 had considerably reduced economic benefits to the homeowner/occupant and to the Nation. (The estimated net benefit of alternative 4 was less than one-third that of the other alternatives, as shown in Technical Support Document No. 3, Energy Budget Levels Selection.)

### 3.3.3 Practicability of Proposed Energy Budget Levels

DOE's analysis raises concern that the two alternatives that are stricter than the minimum life-cycle cost are:

1. Not easily achievable in some cases because of the lack of information available to house designers, or the inadequate commercial availability of materials or components needed to meet the more stringent levels (e.g., lack of information about passive design options; difficulty in obtaining windows with triple glazing).

2. May be achievable for some, but not all, sites in many areas, because of limitations in the way that a building can be oriented, or due to unavailability of unobstructed access to sunlight.

DOE believes that the minimum in life-cycle cost levels (alternative 1) or more lenient levels (alternative 4) can be achieved using available technology.

### 3.3.4 First Costs

The increase in the first cost of alternative 1 (the minimum LCC) is estimated to be between \$750 and \$1500 in moderate and colder climates for an average new house of 1500 square feet (Technical Support Documents No. 8 and No. 3). Alternative 2 is estimated to require an increase of about 30% in first costs over that of alternative 1 if the designer is familiar with cost-effective ways of achieving a lower Design Energy Consumption. However, because of uncertainty in the availability of information and components, this increase in first cost could be considerably more, or somewhat less, than the estimated amount. Alternative 3 is estimated to have an initial investment approximately twice that of alternative 1.<sup>51</sup> Alternative 4 is

<sup>51</sup> As noted in Technical Support Documents No. 3 and No. 8, the initial investment required to achieve budget levels tighter than the LCC minimum is expected to decline over time as new energy conservation technology for residential buildings achieves commercial acceptance.

<sup>50</sup> See Technical Support Document No. 8, Economic Analysis, Appendices A and I, for details.

estimated to have 30% lower first costs than alternative 1.

As a result of the above analysis, DOE is concerned that Energy Budget Levels tighter than the minimum LCC levels could create an increase in building first costs that might intensify the present slowdown in the residential construction market.

### 3.3.5 Environmental Impacts

As noted in Section 2.3.1, the major area of potential environmental impact associated with the Energy Budget Levels is indoor air quality. The proposed Standards are designed so that no credit is given at this time for reducing air infiltration rates. As a result, all four alternatives are expected to have the same (i.e., negligible) impacts on indoor air quality.<sup>52</sup>

Because the more stringent alternatives result in greater reductions in the net air pollution caused by energy production, transmission, and use,<sup>53</sup> the strictest alternative (3) is expected to have the most favorable total impact on the physical environment. The most lenient alternative (4) has the least favorable impact on the physical environment, because it results in significantly smaller energy savings than the other three alternatives.

### 3.3.6 Renewable Energy Systems

DOE wishes to encourage innovative building designs which make use of solar and other renewable energy sources, as well as new methods of energy conservation. Setting the Energy Budget Levels at the LCC minimum (alternative 1) encourages the development and implementation of new design approaches. It requires the use of energy conservation measures that are more stringent than those used by most builders today. Alternatives 2 and 3, because they require even greater use of innovative measures to reduce energy use, could serve to further encourage the use of renewable energy systems in building designs. Alternative 4, the most lenient level, is anticipated to have little effect on encouraging the use of renewable energy systems in buildings.

Other aspects of the proposed Standards may be as important as the levels of the Energy Budget Levels in

<sup>52</sup> DOE anticipates that improvements in (1) the measurement of air infiltration rates, (2) the knowledge of relationships between building design, construction, and air infiltration rates, and (3) technologies (such as heat recuperators) that may permit low levels of infiltration without adverse impacts on air quality, may in the future make it possible for DOE to give credit for reductions in air infiltration rates.

<sup>53</sup> Technical Support Document No. 7, Draft Environmental Impact Statement.

encouraging the use of renewable energy systems. One example is the effort to disseminate information that illustrates how systems, such as active and passive solar energy systems, can be used in designs to facilitate achieving compliance with the proposed Standards in different regions of the country. This and related issues are discussed in Section 2.4.2.

### 3.3.7 DOE's Decision on Energy Budget Levels

DOE considered the results of the analyses, as reflected in the summary discussion above, and decided to set the Energy Budget Levels for single-family residences at the minimum life-cycle cost levels. The reasons against selecting the stricter levels of alternatives 2 and 3 were (1) DOE's assessment of the difficulty of achieving those levels at the present time, and (2) the higher first costs associated with those stricter levels. The reasons against the more lenient level of alternative 4 were that it would result in (1) considerably lower energy conservation than the other alternatives, (2) less favorable economic and environmental impacts, and (3) virtually no encouragement of the use of renewable energy systems.

As noted previously, the LCC minimum points are generally reflective of the levels of an average residential building designed to maximize the economic benefits to the building owner/occupant. Because of uncertainty and variations in energy prices, conservation costs, building designs and climates, individual buildings will exhibit a range of minimum life-cycle cost points that are expected to center about the point chosen by DOE. Furthermore, as energy prices rise and as the costs of new energy conservation measures fall, more stringent Energy Budget Levels may be appropriate. For these reasons, DOE anticipates updating the Standards.

To assess the nature of the proposed single-family residential Energy Budget Levels, DOE compared them with already existing standards, i.e., the HUD Minimum Property Standards (MPS).<sup>54</sup> The Economic Analysis (Technical Support Document No. 8) also compares the two standards and shows that the proposed single-family residential

<sup>54</sup> Lawrence Berkeley Laboratory, "Residential Energy Performance Standards: Comparison of HUD's Minimum Property Standards and DOE's Proposed Standards," LBL-9817 (October, 1979). This report compares key features of the two standards, summarizes the assumptions used in developing them, and shows how the HUD/MPS could be modified to be consistent with DOE's proposed Standards.

Energy Budget Levels are more stringent than the HUD Minimum Property Standards, are more desirable economically than the HUD Minimum Property Standards and can be achieved using current building practices.

Table 3-1 illustrates several sets of options for meeting the proposed single-family residential Energy Budget Levels for three locations. These are some of the ways the Energy Budget Levels reported in Appendix I to the proposed rule can be achieved.

Table 3-1.—Illustrative Ways of Meeting the Proposed Energy Budget Levels for Single-Family Residences in Three Locations

Gas heated homes	
Location	Sets of options
Chicago, IL.....	<ol style="list-style-type: none"> <li>1. Average window area and distribution*; triple glazing*; R-38 ceiling and R-19 wall insulation</li> <li>2. Windows redistributed so that south facing window area increased by 75%, and east, west, and north facing window area decreased by 25%; double glazing; R-38 ceiling and R-19 wall insulation</li> <li>3. Active solar domestic water heating system*; double glazing; R-38 ceiling and R-11 wall insulation</li> </ol>
Atlanta, GA	<ol style="list-style-type: none"> <li>1. Average window area and distribution*; double glazing; R-38 ceiling, R-19 wall, and R-11 floor* insulation</li> <li>2. Windows redistributed so that south facing window area increased by 75%, and east, west, and north facing window area decreased by 25%; double glazing; R-38 ceiling and R-11 wall and R-11 floor insulation</li> <li>3. Active solar domestic water heating system*; double glazing; R-19 ceiling, R-11 wall and R-7 floor insulation</li> </ol>
Houston, TX	<ol style="list-style-type: none"> <li>1. Average window area and distribution*; double glazing; R-30 ceiling and R-11 wall insulation</li> <li>2. Active solar domestic water heating*; R-19 ceiling and R-11 wall insulation</li> <li>3. Other alternatives, such as passive solar design and redistribution of windows, not evaluated for Houston</li> </ol>
Chicago, IL.....	<ol style="list-style-type: none"> <li>1. Average window area and distribution*; triple glazing*; R-38 ceiling and R-25 wall insulation; heating supplied by a heat pump</li> <li>2. Windows redistributed so that south facing window area increased by 36%, and east, west, and north facing window area decreased by 12%; triple glazing; R-38 ceiling and R-19 wall insulation; heating supplied by heat pump</li> <li>3. Active solar domestic water heating system*; double glazing; R-38 ceiling and R-25 wall insulation; heating supplied by electric resistance</li> </ol>
Atlanta, GA	<ol style="list-style-type: none"> <li>1. Average window area and distribution*; triple glazing*; R-38 ceiling, R-19 wall, and R-11 floor* insulation; heating supplied by heat pump</li> <li>2. Windows redistributed so that south facing window area increased by 80%, and east, west, and north facing window area decreased by 27%; double glazing; R-38 ceiling, R-19 wall and R-11 floor*; insulation; heating supplied by heat pump</li> <li>3. Active solar domestic water heating system*; double glazing; R-30 ceiling, R-19 wall, and R-11 floor*; insulation; heating supplied by electric resistance</li> </ol>
Houston, TX	<ol style="list-style-type: none"> <li>1. Average window area and distribution*; triple glazing*; R-38 ceiling and R-19 wall insulation; heating supplied by heat pump</li> <li>2. Active solar domestic water heating*; R-19 ceiling and R-11 wall insulation</li> </ol>

Table 3-1.—Illustrative Ways of Meeting the Proposed Energy Budget Levels for Single-Family Residences in Three Locations—Continued

Gas heated homes	
Location	Sets of options
Houston, TX	3. Other alternatives, such as passive solar design and redistribution of windows, not evaluated for Houston

\* The average window area is 15% of total floor area. The windows are distributed equally among the exterior walls.

<sup>b</sup> Double glazing plus storm windows can substitute for triple glazing with little change in the Design Energy Consumption of the house.

<sup>c</sup> Floor insulation is noted in Atlanta, Georgia and all other areas where crawl space basements are used.

<sup>d</sup> The active solar domestic water system is assumed to supply 60% of the domestic hot water in a 1500 square foot house for the purpose of this illustration.

#### 4.0 Building Design Evaluation Techniques

##### 4.1 Introduction

The proposed rule provides two approaches for determining compliance with the Standards:

(1) A performance approach: Calculating the Design Energy Consumption of a building design for comparison with the Design Energy Budget applicable to that building design. For this approach, proposed § 435.03 requires the use of an evaluation technique to calculate the Design Energy Consumption. The evaluation technique may be either the Standard Evaluation Technique, which is included specifically in the proposed Standards and is described below, or an alternate evaluation technique, approved in accordance with proposed § 435.06.

(2) An equivalent approach: Complying with the requirements of a model code or Manual of Recommended Practice which has been determined to be "equivalent" to the Standards. The evaluation technique discussed here applies to the performance approach.

DOE has examined the issues surrounding the process by which the Design Energy Consumption of a building design may be determined. The process combines a number of diverse specializations, including computer science, climatology, engineering and architecture. It is also a process about which there is considerable diversity of professional opinion regarding which approach is best suited for use as part of these Standards.

DOE is proposing to establish the Standard Evaluation Technique to provide a method for calculating the Design Energy Consumption of a building design. The calculation method in the Standard Evaluation Technique was chosen from among many energy calculation methods currently in use.

The selection process is explained in Technical Support Document No. 1, The Standard Evaluation Technique. That document describes in detail the criteria and selection process used in establishing the Standard Evaluation Technique, as well as related technical and economic issues.

In addition, the document provides considerable detail regarding the Standard Evaluation Technique calculation methods and their capabilities, limitations, accuracy, ease and cost of use, and future development.

The discussion in this section of the preamble describes how the Standard Evaluation Technique relates to the proposed Standards and also outlines the procedure for developing alternate evaluation techniques.

##### 4.2 Elements of Building Design Evaluation Techniques

Energy calculation methods are used for a variety of tasks in the building design process and in the examination of the energy consumption of existing buildings. Although energy calculation methods have been available for a number of years, there has been a notable proliferation in both the number of available methods and their use since the oil embargo of 1973-1974.

The traditional use for energy calculation methods is as a design tool to evaluate the energy efficiency of building design alternatives. This includes such analyses as:

- Comparing alternative HVAC systems to select the one best suited for the building.
- Comparing various wall compositions to assess energy savings at different construction costs.
- Determining the energy savings due to "retrofit" energy conservation methods.
- Sizing solar energy collection systems.

Because of the role of evaluation techniques in these Standards, DOE believes it is important to distinguish between energy calculation methods, which are widely used in the building design process, and the Standard Evaluation Technique in this proposed rule. The Standard Evaluation Technique may be viewed as an energy calculation method to which certain fixed parameters and instructions have been added. Further, the application of the proposed Standard Evaluation Technique is more limited in scope, as it is used to determine, in a controlled manner, a building's Design Energy Consumption.

Designing buildings under a performance approach will mean choosing among various tradeoffs

available to the designer, a task well suited for easy-to-use and cost-effective energy calculation methods. DOE feels strongly that the evaluation techniques can play an important part in the building design process and wishes to encourage their use in that process.

The Standard Evaluation Technique for the proposed Standards is composed of three major elements:

- An energy calculation method consisting of a set of mathematical equations which approximate the actual operation of a building based on its design.<sup>55</sup>

- Fixed parameters, used as data for the calculation method, which establish a consistent basis for comparing the Design Energy Consumption of a building design to its Design Energy Budget. This set of fixed parameters includes:

- Weather data.
- Standard Building Operating Conditions.
- Certain fixed data as specified by DOE.

- Procedures (i.e., instructions) for the combined use of both the calculation method and the fixed parameters, which result in the calculation of Design Energy Consumption for a building design.

These same three basic elements will also be present in any approved alternate evaluation technique.

An evaluation technique must provide a consistent framework in which building designs can be evaluated. There are certain factors, such as building operating conditions which, if varied by the designer, could significantly affect the Design Energy Consumption of a building design. If such factors are held constant from one

<sup>55</sup> Tables 1, 2 and 3 in Appendix IV of Technical Support Document No. 1, The Standard Evaluation Technique, identify all subroutines of the Standard Evaluation Technique programs that utilize algorithm or calculation values that were developed by private individuals or organizations with recognized expertise in the particular area. Since these algorithms and calculation values are not commercial standards as contemplated by Section 32 of the Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), determinations pursuant to Section 32(a) are not deemed necessary. Nevertheless, DOE considers it important that the public be provided with information concerning the source of algorithms and calculation values used in the Standard Evaluation Technique. Furthermore, as would be provided to the public were Section 32 applicable, DOE has determined that none of the algorithms or calculation values listed in Tables 1, 2 and 3 of Appendix IV was developed in accordance with the criteria set forth in Section 32(b) concerning public participation in the development process. It should be noted, though, that DOE experts have independently evaluated each subroutine item listed in the referenced tables, without regard to source, and determined that each represents the best available algorithms or calculation values.

building design to another, the calculation of Design Energy Consumption can be done on a fair and equitable basis.

When energy calculation methods are used in their traditional roles, as previously discussed, a consistent framework for comparison purposes is often used. It is common practice, for example, when comparing the energy requirements of alternative HVAC systems, to hold all other building data constant from one comparison to another. This is done so that the energy related aspects of the HVAC system under study can be evaluated. Energy calculations of this type would be of little value if the weather data or building occupancy patterns were allowed to vary from one comparison to another.

This same approach has been adopted by DOE in the Standard Evaluation Technique, which is structured to provide a consistent framework in which the energy related aspects of a building design can be isolated and evaluated.

**4.3 Definition of the Standard Evaluation Technique for the Proposed Rule**

DOE considers it essential that the Standard Evaluation Technique be readily available, precisely defined and in the public domain. The proposed Standard Evaluation Technique meets these requirements and consists of the following:

- The Standard Evaluation Technique calculation methods: three public domain computer programs, DOE-2, TRNSYS and DEROB, and their supporting documentation and user's manuals.

- The Standard Evaluation Technique fixed parameters: weather data, Standard Building Operating Conditions, and certain fixed data as specified by DOE.

- The Standard Evaluation Technique procedures (instructions): A detailed set of instructions for using the Standard Evaluation Technique calculation methods and fixed parameters. The instructions include:
  - Selection of the appropriate public domain computer program to use with a specific building design.
  - Selection of the appropriate weather data and Standard Building Operating Conditions.
  - Use of the public domain calculation methods selected, including the requirements for data associated with the building design.
  - Application of weighting factors to the building design energy requirements by fuel type (gas, oil and electricity) to

determine the Design Energy Consumption of the design.

**4.3.1 The Standard Evaluation Technique Calculation Methods**

The current state of the art in building energy calculation methods is not sufficiently developed to support a single computer program for the energy analysis of all building classifications; heating, ventilation and air-conditioning systems; lighting; domestic hot water heating systems; and nonrenewable energy sources. The reasons for this are discussed in detail in Technical Support Document No. 1, The Standard Evaluation Technique, and briefly in

Section 4.5 of the preamble. Therefore, DOE is providing the three computer programs indicated as the calculation methods for the Standard Evaluation Technique.

Their applications for this proposed rule are indicated in the matrix which follows. This matrix indicates that, for purposes of evaluating Design Energy Consumption, DOE is proposing three categories of building types and generic HVAC system configurations:

- Single-family residential.
- Commercial, with unitary HVAC systems.
- Commercial, with central HVAC systems.

Building category	Conventional systems	Passive solar	Hybrid solar	Active solar
Single-family residential.....	DOE-2.....	DEROB.....	(?)	DOE-2/TRNSYS
Commercial unitary.....	(?)	(?)	(?)	(?)
Commercial Central.....	DOE-2.....	(?)	(?)	DOE-2/TRNSYS

<sup>1</sup>Not presently available. Planned for the final rule. (Section 4.5.2)

Within the single-family residential category are included both attached and detached residences, as defined in proposed § 435.04. All other building classifications defined in the proposed rule are considered "commercial" for purposes of using the Standard Evaluation Technique. Unitary systems are defined as packaged HVAC equipment such as window air-conditioners, through-the-wall conditioners, and rooftop units. The equipment is distinguished from central plant components in that multifunctional components have been prepackaged on an assembly line. Central systems are defined as systems characterized by a central plant (chillers, boilers, furnaces, etc.) servicing several conditioned areas via a distribution system. The distribution system can be all air (variable volume, dual-duct, etc.); air-water (two-pipe, induction, dual-duct, etc.); or all water (fan-coil units with wall apertures, etc.).

Also, the matrix divides building energy systems into two categories:

- Designs which are considered conventional and use nonrenewable energy.

- Designs which include energy systems that utilize solar energy.

At the present time, the Standard Evaluation Technique does not treat any other renewable energy resource. Definitions of active, passive and hybrid solar energy systems are found in

Technical Support Document No. 1, The Standard Evaluation Technique.

The following paragraphs briefly describe each of the Standard Evaluation Technique computer programs and their capabilities. A more extensive description is found in Technical Support Document No. 1.

**DOE-2**

This computer program is used to calculate the design energy requirements of non-solar single-family residential buildings and commercial buildings with central HVAC systems. It is also used to calculate building loads for processing by the TRNSYS program in calculating the design energy requirements in single-family residential buildings and central HVAC system commercial buildings which utilize active-solar energy systems.

Given information on the building's intended location, construction, operation, ventilating and air-conditioning equipment, DOE-2 calculates the estimated hour-by-hour energy requirements of a building. It has three main calculation sections, as used in this proposed rule: LOADS, SYSTEMS, PLANT. The LOADS section calculates the hourly heating and cooling load for each thermal zone within the building. SYSTEMS simulates the operation of the HVAC distribution system. PLANT simulates the operation of primary energy conversion equipment, such as boilers and chillers.

**TRNSYS**

This computer program is used to calculate the contribution of an active solar energy system toward a building's heating, cooling and domestic hot water heating fuel requirements. It is used in conjunction with the DOE-2 program and is applicable to single-family residential and commercial buildings. TRNSYS was developed primarily to analyze the behavior of active solar heating and cooling systems. TRNSYS has the ability to simulate the interconnection of a wide range of possible component designs, controls, and system configurations for active solar energy systems.

**DEROB**

This computer program is used to calculate the design energy requirements of single-family residential building designs which incorporate passive solar energy systems.

DEROB is structured to allow a sophisticated analysis of most of the currently recognized passive solar design features. DEROB is the only public domain energy analysis program available which has the capability to adequately analyze complicated building geometries which incorporate passive solar energy design features such as direct gain or Trombe walls.

The three computer programs, their supporting documentation and user's manuals describe the Standard Evaluation Technique calculation method. The sources of these computer programs and their documentation are given in Table 1 in the proposed rule. DOE anticipates that the private sector will respond to the need for ready access to the Standard Evaluation Technique by making available the Standard Evaluation Technique calculation method, criteria and procedures on a time sharing basis through a number of computer service bureaus.

**4.3.2 The Standard Evaluation Technique Fixed Parameters**

In developing the fixed parameters, DOE had three objectives:

- (1) Minimize the impact of the fixed parameters on building design flexibility.
- (2) Achieve an acceptable degree of replicability among users of the Standard Evaluation Technique.
- (3) Adhere, to the extent possible, to (a) the methodology used in the process by which Energy Budget Levels were developed for this proposed rule, and (b) the values typical of actual building operating conditions.

**Climate Data**

The climate data for the proposed rule is the National Oceanic and Atmospheric Administration (NOAA) Test Reference Year (TRY) data for 78 SMSA's and cities. The TRY data provide information on weather conditions, including temperature, humidity, cloud cover as an index of solar radiation, and wind on an hourly basis for the 8,760 hours of a year. The TRY data are recorded climate data for a year, selected to represent the climate for a location.

**The Standard Building Operating Conditions**

The length of time of use and the intensity of use of a building during the course of a year will affect its annual energy use. During the design of a building, the future use of a building cannot be precisely predicted. However, reasonable estimates of typical use can be made. As part of the Standard Evaluation Technique, these estimates of typical use have been made standard for each building design classification and, where appropriate, for each major function within a building design classification. They have been designated Standard Building Operating Conditions, and provide a consistent basis for calculating Design Energy Consumption for building designs reflecting similar uses.

Standard Building Operating Conditions are to be used with the Standard Evaluation Technique for the following:

- (1) Occupancy
- (2) Artificial lighting
- (3) Domestic hot water
- (4) Elevators and escalators (vertical transportation).
- (5) Toilet exhaust
- (6) General exhaust
- (7) Indoor temperature conditions

**Certain Fixed Data Values**

Because the results of energy calculation methods can be greatly affected by certain values involving assumptions and approximations by the user, DOE has elected to fix certain data values to provide greater consistency in the calculations. For example, national holidays, daylight savings time and a January 1 to December 31 calculation period have been specified as part of these fixed data input variables. For additional details, see Technical Support Document No. 1, The Standard Evaluation Technique.

**4.3.3 The Standard Evaluation Technique Procedures**

The procedures in the Standard Evaluation Technique for calculating the

Design Energy Consumption of a building are outlined below. Complete details are provided in Technical Support Document No. 1, The Standard Evaluation Technique.

**Step 1: Select the Appropriate Standard Evaluation Technique Computer Program for a Particular Building**

The Standard Evaluation Technique provides a procedure so a user can determine which computer program is appropriate to use for an HVAC system and building type combination as shown in the matrix in Section 4.3.1.

**Step 2: Select the Appropriate Weather Data**

Proposed Appendix II sets out the procedure for choosing appropriate weather data which includes the following basic steps:

- (1) If the site of the building design is within the boundaries of one of the 78 SMSA's or cities listed in Appendix II of the proposed rule, use the TRY weather data for that SMSA or city.
- (2) If not, then: (a) Select the SMSA or city with weather data most closely approximating the weather local to the site, based on criteria given in Appendix II of the proposed rule. If this selection criteria cannot be met, then (b) Select the closest SMSA or city within 5 degrees latitude of the site.
- (3) If the building design requires local weather data to develop the energy conservation strategies of the design and no TRY weather data is available to approximate local conditions, an exceptions procedure will be provided.

**Step 3: Identify the Applicable Standard Building Operating Conditions**

Once the building design classification has been determined from the definitions in § 435.04 of the proposed rule, refer to Technical Support Document No. 1, The Standard Evaluation Technique, to select the applicable Standard Building Operating Conditions.

**Step 4: Use the Calculation Method**

Select the appropriate computer program from instructions in Technical Support Document No. 1, The Standard Evaluation Technique. Develop data from the building design, use the Standard data and calculate the building's design energy requirements.

**Step 5: Apply the Weighting Factors to Derive Design Energy Consumption**

This last step is applied to the building's design energy requirements as calculated, to take into account the weighting factors discussed in Section 2.4.1 of the preamble to this proposed

rule (see instructions in Technique Support Document No. 1, The Standard Evaluation Technique, Appendix V). The result is the Design Energy Consumption of the building, which can then be compared to its Design Energy Budget which, as noted previously, also incorporates these weighting factors.

The above calculation methods, fixed parameters and procedures define the Standard Evaluation Technique for this proposed rule.

#### 4.4 Alternate Evaluation Techniques

Proposed § 435.03 permits the use of an approved alternate evaluation technique to calculate a building's Design Energy Consumption. DOE encourages the development and application of energy calculation methods, whether proprietary or in the public domain. DOE believes it to be in the public interest that additional computer and "manual" energy calculation methodologies be established as alternate evaluation techniques on a national basis.

DOE feels that the development of manual calculation methods is important because they will provide alternative procedures which are less costly and time consuming for calculating residential and small commercial building Design Energy Consumptions.

##### 4.4.1 Proposed Procedure for Approval of Alternate Evaluation Techniques

There is little practical experience in establishing a testing methodology for determining equivalency between energy calculation methods. To date, only the State of California has established a certification procedure for computer energy calculation methods, and it has less than two years of regulatory and administrative experience with this process.

Proposed § 435.06 prescribes a procedure under which a request may be made to DOE for approval of an alternate energy calculation computer program or a manual energy calculation technique.

DOE intends to provide the applicant with standard data for several buildings, including drawings and specifications and other information as necessary. DOE feels that the input, and any assumptions that were made when completing the input, will be consistent with the Standard Evaluation Technique for all candidate methodologies considered.

The applicant would then perform the calculations using the candidate

methodology. Changes to the input would not be allowed without DOE's permission. Using the results, the applicant would complete standard forms to be provided by DOE, which would then be returned to DOE together with copies of the applicant's data, specifications, the candidate methodology's normal results for these designs, and commentary on any variance from the standard data above. Approval will be granted by DOE if the results of the methodology are within an established range of the Standard Evaluation Technique acceptable to DOE.

DOE may also provide limited and qualified approval of an alternate evaluation technique. Such limitations and qualifications could include specific building types, geographic regions, and HVAC systems to which its application is restricted. Subsequent application of the approved alternate to the calculation of Design Energy Consumption would also include the use of the appropriate criteria and procedures established by DOE for all evaluation techniques. Should the candidate program methodology be disapproved, the applicant will be informed of the reasons.

Any changes in an approved alternate evaluation technique would be required to be reported to DOE. A decision will be made by DOE whether the changes would affect DOE approval of the alternate evaluation technique. Periodic checks of procedures or of results for reproducibility may be requested by DOE. A current list of approved alternate evaluation techniques along with any limits in their applicability will be published as Appendix III of the proposed rule. It is also anticipated that periodic updates of this listing will be published in the Federal Register.

#### 4.5 Technical Issues

##### 4.5.1 General Limits of Energy Calculation Methods

Energy calculation methods are sets of mathematical equations approximating the energy requirements and processes of a building, its components and systems, in response to both its use and to weather conditions. These methods are used during the design of a building to estimate its expected level of energy use. Since the calculation methods contain assumptions and approximations of the weather conditions, the projected building use, and the building's systems and components, it is difficult to predict

exactly the building's actual performance. Results can be expected to be within  $\pm 15\%$  of a building's actual energy consumption. With respect to HVAC systems, there are many important components and subsystems which affect energy consumption and that are imperfectly understood. However, the equations representing these are reasonably accurate. (See Technical Support Document No. 1, The Standard Evaluation Technique.)

In other areas, such as passive solar cooling, natural illumination and building infiltration, little quantitative information is known about all the factors affecting these processes.

##### 4.5.2 Limits of the Standard Evaluation Technique Computer Programs

In addition to the generic limitations of computer programs, there are certain limitations specifically associated with each of the three Standard Evaluation Technique computer programs (see Technical Support Document No. 1, The Standard Evaluation Technique). At this time, DOE does not feel that a public domain methodology is available that can adequately evaluate the following categories of building types and HVAC systems:

- Single-family residential hybrid solar energy systems.
- All commercial unitary systems.
- Central-system commercial buildings which utilize passive or hybrid solar energy systems.

Because of these limitations, discussed more fully in Technical Support Document No. 1, DOE recognizes the need for evaluation technique exceptions as part of the administrative review procedures for the Standards. In those circumstances where the Standard Evaluation Technique cannot adequately analyze a building design or certain of its components, DOE is considering the establishment of a review process to determine whether Design Energy Consumption is less than or equal to the Design Energy Budget.<sup>56</sup> However, in the time period between this proposed rule and the final rule, DOE efforts will be aimed at developing a more comprehensive Standard Evaluation Technique than is currently available. The following matrix indicates how the Standard Evaluation Technique capabilities are planned to be expanded.

<sup>56</sup>Technical Support Document No. 1, The Standard Evaluation Technique, identifies different systems and technologies which the Standard Evaluation Technique is unable to treat at this time.

Building category	Conventional systems	Passive solar	Hybrid solar	Active solar
Single-Family Residential	DOE-2	DEROS	DEROB/TRNSYS	DOE-2/TRNSYS.
Commercial, Unitary	DOE-2	DOE-2	DOE-2/TRNSYS	DOE-2/TRNSYS.
Commercial, Central	DOE-2	DOE-2	DOE-2/TRNSYS	DOE-2/TRNSYS.

As depicted, the Standard Evaluation Technique capabilities will be expanded to encompass the currently expected building type and generic HVAC system categories for the final rule. Further, DOE is planning to develop a single computer program which will be applicable in all categories. This program, to be designated "DOE-n," is in the very early planning stages and requires considerable research and development work.

4.6 Public Comment

4.6.1 Comments on the ANOPR

Seventeen comments received by DOE after publication of the ANOPR addressed the issue of evaluation techniques. These comments related primarily to three different recommendations: (1) Specify one evaluation technique; (2) permit optional evaluation techniques; and (3) provide no evaluation technique.

The first group of comments (which were the majority received regarding this issue) encouraged the use of one evaluation technique that can be readily and accurately applied by both design professionals and building code officials to compute Design Energy Consumption. It was suggested that computer programs that would satisfy this prerequisite included DOE-1 (one comment), BLAST (two comments), ESP-1 (one comment), and AXCESS (one comment).<sup>57</sup>

The second group of commenters stressed that the evaluation techniques provided should be broad enough to permit the use of any recognized calculation procedure, and urged that both manual and computer based forms of calculation be made available. These comments maintained that design professionals should be permitted to select the methodology most appropriate to their needs. One comment urged that a reference list, covering manual and computer assisted techniques, be included in the rule.

The third group of comments questioned the ability to use available computer programs to estimate accurately actual building performance.

<sup>57</sup>DOE-1 is an earlier version of DOE-2. BLAST is an energy program developed by the Corps of Engineers Research Laboratories and is in the public domain. ESP-1 is a proprietary program of Automated Procedures for Engineering Consultants (APEEC).

Because the computation process can be quite complex, these comments were concerned with the lack of skilled technicians to prepare the design parameters of a building design for the computer programs. These comments urged that evaluation techniques such as DOE-1 not be included in the proposed rule, or, if included, be an optional evaluation technique.

4.6.2 DOE's Response

DOE shares the basic concerns raised by commenters to the ANOPR and has taken those comments into consideration in determining which approach to take for the evaluation technique. As proposed, a Standard Evaluation Technique is provided which meets DOE's criteria for the role which an evaluation technique must play in the performance approach under these Standards. Additionally, an approval process for alternate evaluation techniques is proposed which allows limited and qualified approval for both computer based and manual energy calculation methods. Therefore, DOE foresees that a wide variety of energy calculation methods will be developed to determine a building's Design Energy Consumption that will yield results consistent with the Standard Evaluation Technique.

4.7 General Issues

DOE's objectives in the development of the evaluation technique concept in general, and the Standard Evaluation Technique in particular, have been:

- (1) Accuracy: To select an energy calculation method that is representative of the current state of the art for such methods.
- (2) Replicability: To assure an acceptable degree of consistency of results among evaluation technique users through the use of certain fixed data parameters and building operating conditions.
- (3) No undue burden: To minimize undue economic, time or training burdens on designers using evaluation techniques for compliance with the Standards, and to facilitate the use of evaluation techniques at the appropriate level of detail and cost which accommodates the designs of both large, complex buildings, and small, uncomplicated ones.
- (4) Innovation: To permit and encourage the use and evaluation of

innovative energy conserving design strategies.

Considering the complexity of developing and using evaluation techniques and the limits to the current state of the art of calculation methods, these objectives are difficult to attain at once. Further, the four objectives may tend not to support one another. For example, the evaluation technique utilizes the fixed parameters and procedures so that an acceptable degree of replicability of results can be obtained. However, the use of Standard Building Operating Conditions may not encourage innovation because it may restrict the application of energy conserving design strategies that rely on reasonable temperature swings in response to external climate conditions. This is an especially sensitive issue with respect to passive solar buildings. The use of fixed parameters may also cause undue burdens for building designers in that a duplication of effort will result when energy calculations are performed using both the hours of operation-actually expected for the building design and those required by the Standards.

DOE is aware of the potential for certain inequities to arise from conditions similar to the examples given above. Currently, DOE is seeking ways to attain all of its objectives with the evaluation technique and not stifle innovation or cause undue burdens to building designers. The solution may well lie with the development and approval of alternate evaluation techniques.

DOE's ongoing research program is geared to enhancing the capabilities of the Standard Evaluation Technique computer programs to model additional innovative and traditional systems. Efforts are also underway to make the Standard Evaluation Technique significantly easier to use. In addition, DOE is actively supporting the development of simplified energy calculation methods, in the public domain, which will use programmable calculators or microcomputers (see Technical Support Document No. 1, The Standard Evaluation Technique). DOE also encourages the development and approval of simple, easy-to-use proprietary evaluation techniques.

DOE recognizes the need for an exceptions procedure for innovative building designs which cannot be evaluated by approved evaluation techniques. Further, DOE is concerned that such an exceptions procedure not cause costly time delays that could act as a deterrent to the use of innovative techniques in complying with the Standards.

DOE feels that the four objectives of accuracy, replicability, no undue burden and encouraging innovation also apply to the development of the proposed procedure for approving alternate evaluation techniques.

Issues related to the approval process include:

- Development of abbreviated formats for weather data, fixed parameters, operating conditions and procedures appropriate for simpler calculation methods.

- Development of procedures for approving evaluation techniques which include capabilities not present in the Standard Evaluation Technique.

- Development of straightforward updating procedures to approve enhancements and refinements to approved evaluation techniques.

DOE is especially concerned that the approval process not result in undue cost and time burdens on smaller organizations with special evaluation techniques.

#### 4.8 Relationship to Actual Consumption

DOE anticipates that many questions will arise concerning the consequences of not complying with the proposed Standards once they are in effect. For example, DOE officials have been asked: What will happen if a particular building's actual energy consumption, after its construction and "break-in" period, exceeds its Design Energy Budget? The intent of these Standards is to regulate only the designs of new buildings. The operation of buildings is not within the scope of the Standards as proposed.

Also, evaluation techniques may provide a reasonable projection of expected building energy use under standard conditions, but it is not a precise prediction of actual use because:

- Approximations and assumptions are used by all energy calculations methods (see Section 4.5.2 and Technical Support Document No. 1, The Standard Evaluation Technique).

- Historical weather data from a previous reference year is used, which will vary from the weather for each year that the building is in actual operation.

- The Standard Building Operating Conditions used to provide a consistent comparison of Design Energy Consumption among buildings with the same uses may be different from the actual use of a particular building over a year's time.

- The Design Energy Consumption calculation excludes energy for certain process uses, such as computer operations, kitchen equipment and laundries; however, the actual energy

used by the building would include these energy uses.

#### 4.9 Request for Public Comment

Because of the significance of the evaluation technique concept, DOE is especially interested in receiving public comment on issues related to the Standard Evaluation Technique and the approval process for alternate evaluation techniques.

#### 5.0 Implementation

##### 5.1 Introduction

This discussion of the implementation of the Standards is included to offer the public as complete a picture as possible of the operation of the program as it is presently conceived. This is done to facilitate comment on the proposed Standards, in addition to providing a basis for comment on issues specifically related to the development of implementation regulations. A proposed rule on implementation will be published at a later date.

Comments received from the Advance Notice of Proposed Rulemaking published by HUD in November 1978, revealed a concern by State and local officials that sanctions might be imposed before they have sufficient time or resources to come into compliance with the Standards. For this reason, several implementation alternatives are being considered to address any burden placed on State and local code officials by implementation of the proposed rule.

The Act authorized HUD to develop and promulgate energy performance standards for new buildings and to undertake the implementation of such standards. The Department of Energy Organization Act, enacted in August 1977, transferred from HUD to DOE the responsibility and authority to develop and promulgate the Standards. HUD currently has statutory responsibility for issuing implementation regulations.

Both HUD and DOE recognize that the development of implementation regulations, prescribing how compliance with the Standards is to be achieved, is closely linked to the development of the Standards themselves. Therefore, on March 21, 1979, a Memorandum of Understanding (MOU) was executed by HUD and DOE, pursuant to which DOE agreed to prepare analyses of implementation issues and to undertake development of administrative procedures in connection with implementation.

This section of the preamble is based upon the analyses and implementation issues development performed by DOE in discharging its responsibilities under that MOU.

#### 5.2 Statutory Requirements

Section 305(a) of the Act provides that "no Federal financial assistance shall be made available for the construction of any new commercial or residential building in any area of any State" unless certain actions are taken by State and local governments to avoid imposition of the sanction. "Federal financial assistance" is defined in Section 303(7) as:

(A) Any form of loan, grant, guarantee, insurance payment, rebate, subsidy, or any other form of direct or indirect Federal assistance (other than general or special revenue sharing or formula grants made to States) approved by any Federal officer or agency; or

(B) Any loan made or purchased by any bank, savings and loan association, or similar institution subject to regulation by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

Section 305(c) of the Act requires that each House of Congress must approve the need for the sanction before it comes into effect.

Under Section 305(a)(1) of the Act, a State may avoid imposition of the sanction by certifying that:

(A) The unit of general purpose local government which has jurisdiction over such area has adopted and is implementing a building code, or other construction control mechanism, which meets or exceeds the requirements of such final performance standards, or

(B) Such State has adopted and is implementing, on a statewide basis or with respect to such area, a building code or other laws or regulations which provide for the effective application of such final performance standards.

The Secretary is authorized by Section 305(a) to review and investigate the accuracy of, and to periodically update, such certifications. After providing notice to a State, and opportunity for a hearing, the Secretary may disapprove or require the withdrawal of a State certification.

As an alternative to Section 305(a)(1), Section 305(a)(2) of the Act permits the sanction to be avoided where new buildings are determined to be in compliance with the final energy performance Standards pursuant to an alternate approval process. "Approval process" is defined in Section 305(b)(3) to mean:

A mechanism or procedure for the construction and approval of an application

to construct a new building and which involves (A) determining whether such proposed building would be in compliance with the final performance standards for new buildings promulgated under section 304, and (B) administration by the level and agency of government specified by the Secretary pursuant to paragraph (4).

Section 305(b)(4) prescribes the unit of government which shall administer the approval process, in descending order of priority as follows: (1) The agency which grants building permits on behalf of the local governments with jurisdiction over the area in which new construction is proposed; (2) if such agency is not willing and able to administer the approval process, then the process shall be administered by any other agency of the local government with authority to administer the process which is willing and able to do so; and (3) if neither of such agencies is willing and able to administer the approval process, any agency of the State with authority to administer the approval process may do so. Under Section 305(b)(2), the Federal Government is given overall responsibility for an effective alternate approval process.

Section 305(a)(3) authorizes the Department to grant exemption from the enforcement of the sanction, at the request of a State, for areas where construction of new buildings is not of a magnitude to warrant the costs of the measures set forth in Sections 305(a) (1) and (2). Such an exemption may be rescinded where the Department finds that the level of new construction has increased sufficiently to warrant the costs of the alternate measures.

Other statutory provisions include Section 307 which authorizes the Department to make grants to States and local governments to assist them in meeting the cost of administering State certification procedures or an alternate approval process. Under Section 308, the Department is authorized to provide, directly or indirectly by contract or other methods, technical assistance to States and local governments to aid them in meeting the requirements of the Act. No funds have been appropriated pursuant to Sections 307 and 308.

Section 252 of the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619) requires that, when the performance Standards under this program are made effective, the Minimum Property Standards (MPS) of the Federal Housing Administration and the Farmers Home Administration shall be revised to meet those Standards. Even if Congress does not approve the use of the sanction, this provision means that, after the effective date, any new construction subject to MPS (all

subsidized and Federally insured housing programs) must comply with the performance Standards. Section 306 of the Act requires that the head of each Federal agency responsible for the construction of any Federal building shall adopt procedures necessary to assure that any such construction meets or exceeds the performance Standards. Section 546 of NECPA further provides that energy performance targets are to be established for construction of Federal buildings which are consistent with the performance Standard levels set pursuant to the Act. These latter provisions are effective whether or not Congress approves the sanction provisions of the Act.

### 5.3 Considerations in Developing an Implementation Program

To be effective, the implementation of the Standards must be developed within the existing system for the regulation of building construction. Regulation of building construction has traditionally been a local prerogative exercised through local building codes. It has only been within the past decade that States have begun to assert their authority to control construction through the use of statewide mandatory building codes. In almost all cases, though, enforcement of the code has been left to the locality.

Standards used in building code regulations have traditionally been written in specification (as opposed to performance) terms.

Another important feature of the regulatory system is the need for technical assistance for building code officials if they are to adopt and implement the Standards. The concept of energy-related construction requirements is relatively new to many local building officials. Since local building officials often are not architects or engineers trained in building performance concepts, technical assistance will be needed if the long-term objective of performance based regulations is to be achieved.

Another characteristic of the code environment which may affect the design of any Federal regulatory program is the typically small size of code enforcement staffs and the multiplicity of their regulatory responsibilities (e.g., plumbing, electrical, elevator, etc.). In addition, local code enforcement offices may have limited fiscal resources to implement the program.

### 5.4 Implementation Approach

This discussion is intended to give the public a perspective on at least one approach to the implementation of the proposed Standards. This proposed rule

does not include a proposed implementation rule. As mentioned earlier, a proposed regulation addressing implementation is expected to be issued in the near future.

The following sections discuss a preliminary approach to three implementation alternatives: State Certification, Alternate Approval Process and Exemptions.

### 5.5 State Certification

The Act makes it clear that the States, not the Federal Government, have the authority to certify whether a building code meets or exceeds the Standards. The Federal authority rests in the language in the Act which says this State certification authority is to be exercised in accordance with regulations promulgated by the Secretary, currently the Secretary of HUD.

DOE has considered what the form and substance of these regulations should be to achieve an effective Standards program.

An effective program would require that approved building codes meet certain minimum criteria. To insure this, the regulations should require that a State certify a building code only after it meets these criteria.

The minimum criteria might be:

(1) That the code is equivalent to or exceeds the requirements of the Standards, and

(2) That the building code jurisdiction has an adequate implementation program.

The regulations could require a finding by the State that these criteria have been met prior to the certification of a building code. The Secretary could require that a copy of this finding be sent to the Federal Government. This would facilitate the monitoring of the State certification program.

Section 305(a)(3) of the Act supports this type of monitoring program with the following language:

The Secretary shall review and conduct such investigations as are deemed necessary to determine the accuracy of such certifications and shall provide for the periodic updating thereof. The Secretary may reject, disapprove, or require the withdrawal of any such certification after notice to such State and an opportunity for a hearing.

At first glance, the State certification of building codes would appear to pose special problems for a statewide code. A State is placed in the position of certifying its own code.

This problem may be more apparent than real. A State can be expected to take great care to certify a statewide code only if it is equivalent to or exceeds the requirements of the

Standards, because to do otherwise would jeopardize the financing of new building construction in the State.

The regulations should be adequate if the State certification of a statewide code is monitored in the same manner as a local code. The State would be required to make a finding that the statewide code meets the same criteria required of local codes and to provide a copy of this finding to the Secretary. The Federal Government could then review the State's finding to insure that it meets the criteria.

The determination of the equivalency of a building code to the Standards is a major requirement that probably is beyond the analytical capabilities of most States. DOE recognizes that it will have to provide technical assistance to the States to help them meet this requirement.

To be equivalent, a building code would have to satisfy one of the following requirements:

(1) The code must be identical to one of the model codes, model equivalent codes or standards, or manuals of recommended practice approved by DOE and listed in Appendix IV of the Standards, or

(2) The code must provide that a building design meets or exceeds the requirements of the Standards.

To simplify the State task of certifying codes, DOE intends to prequalify, to the extent feasible, standards and codes for inclusion in Appendix IV prior to the effective date of the Standards. Local jurisdiction and States would then be able to adapt or model their codes after one of these equivalent approaches.

DOE is considering making available a methodology for evaluation of a code, with an accompanying administrative manual to States choosing to certify codes. This methodology would provide objective criteria by which codes could be measured against the Standards, thereby facilitating States making equivalency determinations.

Where a State does not have the technical or financial capacity to make equivalency determinations, it could submit the codes of local governments to the Secretary for an "advisory opinion." This would be an informal method of determining whether a code was equivalent to the Standards before the locality has expended funds for adoption and enforcement procedures.

DOE has considered how this regulatory approach could fit into a workable Standards program. To accomplish this, it is important that lending institutions and the other Federal agencies responsible for applying the sanction have current and

reliable information on where building codes have been certified.

The regulation could require monthly reports from the States on the building codes they have certified, along with the State findings supporting the certification of these codes, as discussed above. The Secretary could then publish a list of certified codes every month in the Federal Register.

The lists of certified codes could then be referred to by lending institutions and other Federal regulatory agencies responsible for imposing the sanction. Once the name of the State or local code jurisdiction was published in the Federal Register, and so long as the certification remained valid, no sanction would be imposed against applicants for Federal financial assistance who had designed their buildings to a certified code in those jurisdictions.

DOE has also considered additional ways in which the Federal Government may assist the States and local governments in their administration of the Standards program. The existing State Energy Conservation Program could be used as a mechanism for providing this assistance. This program was initiated by the Energy Policy and Conservation Act (EPCA) of 1975, 42 U.S.C. 6321 *et seq.*

The EPCA program provides grants to States that undertake energy conservation programs which must include certain mandatory provisions, including the adoption and implementation of building lighting and thermal efficiency standards.

Through this program, the States have made rapid progress toward regulations that require more energy efficient new building construction. As indicated in Technical Support Document No. 6, Draft Regulatory Analysis, 34 States have enacted codes that cover all or a portion of their new private construction and an additional 10 States require that code provisions be met in new State construction. An average of \$50,225 per year was spent by the 50 States in FY-1978 in adopting and implementing EPCA building standards.

The Administration is supporting the proposed Energy Management Partnership Act of 1979 which is now before Congress. This act would enlarge the capacity of the States to implement the Standards program. The act would increase the Federal funding for State programs, including building code programs, and require additional coordination between State and local governments.

The regulations implementing the Standards could be incorporated into these existing programs and proposed new legislative authorities. This would

help insure coordination between the implementation of the Standards and other State energy conservation activities.

In addition to the basic requirements that must be met before a code is certified, DOE has identified other possible features that could be required in order to achieve the goals of the Standards program.

The first is that designs for buildings in excess of 50,000 gross square feet would have to be evaluated and certified by a qualified design professional using an approved evaluation technique. It is expected that projects of this size are best analyzed in this way due to the complexity of the relationship of different components and the opportunity to employ performance type energy conserving design concepts. Because these designs customarily require the services of architects or engineers, the requirement should not constitute an undue added burden.

The second requirement would be that each State or local building code contain a procedure whereby an applicant could qualify the design of a building using a performance approach. This requirement would not preclude a State from certifying building codes that use a prescriptive or component approach, but it would ensure an opportunity for a designer to evaluate a whole-building design using a performance path. When the Energy Budget Levels are provided in advance, design costs using the performance path may be less costly than the current practices required by many codes.<sup>58</sup> Training and exposure to performance based design would permit and encourage the opportunity for the increased use of whole-building performance standards.

The third requirement is that a State certified code make certain that a building permit, or an occupancy permit, is not issued for a building where a building design does not satisfy the energy section of the code. The energy section must have the same enforcement standing as other sections of the code, such as health and safety.

The fourth requirement is the need for periodic inspections of the building as it is being constructed, to assure that it is being constructed in conformance with the approved designs.

<sup>58</sup>Many codes applicable to commercial buildings are based upon the ASHRAE 90-75 Standard. This standard requires that, before the performance approach for designing a building can be utilized, the building must be designed using the component approach. This step is necessary to determine applicable budget numbers. When the budgets for particular buildings are provided in advance, as they are in the Standards, a designer need not go through the component design procedures, thereby reducing design costs.

For various reasons, a code may not cover all building types specified in the Standards. Some types may be regulated by separate codes. For example, a State may have a specific code for the construction of schools or hospitals. As part of the certification of a code, the State would have to identify which building types are not covered by the certification and how the Design Energy Consumption of those building types are regulated.

Sanctions could still be imposed where a particular building design is not covered by a certified local code, unless there is a different certified code covering that particular building type. An example illustrating this problem would be where a local code does not cover schools or hospitals. In this case, the proposed building would either have to be designed in conformance with a certified State energy code for schools and hospitals, or qualify under an alternate approval process as discussed below or, the designs would otherwise have to be determined to meet or exceed the requirements of the Standards.

An important issue in the development of State certification procedures concerns amendments to certified building codes for which determinations of equivalency have been issued. States would be required to notify the Secretary of any amendment to a certified code, if such amendment may affect the energy performance of building designs.

When the Standards requirements themselves are revised, an issue arises as to the need to reexamine codes to determine their continued equivalency. In this case, the Secretary would notify States of any amendments required of certified codes due to revision of the Standards. However, the certified codes would remain in effect during a specified period allowed for adoption of the required amendments. An alternative approach would be to require the resubmission of the State plans with new certifications whenever the Standards requirements are revised.

#### 5.4.2 Alternate Approval Process

A second path for complying with the Standards and thereby avoiding the imposition of the sanction would be to satisfy the alternate approval process requirements of the Act.

The term "approval process," as used in Section 305(b)(3) of the Act, means "a mechanism and procedure for the consideration and approval of an application to construct a new building and which involves (A) determining whether such proposed building [is] in compliance with the . . . standards . . ."

The approval process is a means of determining the compliance of a building design with the Standards in the absence of a certified State or local code. The expectation is that, at least for the period immediately following the effective date of the Standards, the approval process may be used by local governments more frequently than the certified code path.

There are several reasons for this:

(1) Some time may be required to bring a local code into equivalence with the Standards.

(2) There may not be adequate implementation of a code to obtain a certification.

(3) Some local code enforcement offices may not have the technical capacity to implement a certified code, even though code provisions meet or exceed the energy requirements of the Standards.

(4) Some communities currently have not energy or building codes operating in their jurisdictions.

The alternate approval process as presently conceived would require two steps to approve an application to construct a new building:

(1) A determination that the building design meets or exceeds the requirements of the Standards.

(2) A declaration by an appropriate level of local or State government that the requirements of the Standards have been met.

The determination could be made by a local code enforcement agency or a private design professional. Many local code enforcement agencies in the country will have the internal capacity to review designs and make these design equivalency determinations. DOE is considering making available a number of evaluation and design aids to facilitate and assist local enforcement agencies in making these determinations. These aids will include a list of prequalified codes against which designs can be compared, manual calculation methods, manuals of recommended practice, and other model codes and standards in formats with which code officials are familiar, in addition to more sophisticated computer evaluation techniques described in other sections of this preamble.

A local code enforcement department which issues a building permit after making a compliance determination could be regarded as administering an approval process. An appropriate official would have to make a declaration to the permit applicant that the building design complies with the Standards. This declaration by an appropriate official with authority to issue building permits could fulfill the

administrative requirements of the approval process.

Even with these tools, many local governments may not want to evaluate building designs. Therefore, the approval process would permit qualified design professionals to certify that a building design satisfies the energy requirements of the Standards. This certification could also meet the determination step of the alternate approval process.

The design professional may be a licensed architect or engineer, code official, or member of any related professional group. Since the approved methods of showing equivalency in Appendix IV of the proposed rule will vary, the required skills of the design professional will likewise vary. The more sophisticated design analysis will require a more highly trained professional. Therefore, it is anticipated that, for each equivalent method included in Appendix IV, there will be an accompanying listing of requirements that, if satisfied, would qualify a design professional.

The certification by a qualified design professional would require a determination by the professional that the Design Energy Consumption of a building design does not exceed the applicable Design Energy Budget for that building type. The qualified design professional could follow the Standard Evaluation Technique or any procedure given in Appendix III.

In addition to the determination that the building design meets the requirements of the Standards, the alternate approval process would also require a declaration by a local or State agency that the requirements of the Standards have been met. Section 305(b)(4) of the Act defines and prioritizes different administering agencies. It gives a priority ranking for administration, starting with an agency that grants building permits on behalf of the unit of local government, then to another local agency, and ending with a State agency. The authority would go to the highest priority agency willing and able to administer the approval process.

The administering agency would be required to include specific findings in its declaration that the administrative requirements of the Standards have been met. These might include:

(1) The administering agency has authority to administer the approval process.

(2) It has received a copy of the building design and a copy of the certification issued by the qualified design professional for that building design.

(3) The person applying for the declaration has provided a written assurance to the agency that construction of the building will conform to the submitted design and that, should substantial modifications occur during construction, a recertification based upon the final design will be submitted.

This approach would not necessarily involve the administering agency in the actual "determination" of the building design, but it would be the focal point where the approval process could be administered.

To avoid the sanction, an applicant for construction funds would present this declaration to a lending institution or other appropriate Federal regulatory agency to show compliance with the Standards.

### 5.6 Exemption

It is anticipated that most State and local jurisdictions will be able to avoid imposition of the sanction in a cost-effective manner through the adoption and implementation of State-certified building energy codes or the use of the alternate approval process. However, Congress recognized there may be areas of the Nation where the volume of building construction is so low and building regulatory mechanisms so undeveloped that the approval process, or adoption and implementation of State-certified codes, would be disproportionately costly in relation to the benefits expected to be obtained. Section 305(a) of the Act provides for the grant of an exemption to such areas.

A request for exemption would include data from which a cost-benefit analysis could be performed. The State would estimate the cost of administering an approval process based upon the anticipated levels of construction in that area. Those costs would be subtracted from a dollar estimate of the benefits in energy savings that would be achieved over the same period had buildings been designed in accordance with the Standards. If the balance is negative (i.e., costs exceed benefits), an exemption would be granted.

Further, no exemption would be granted to an area within a State which is located within a code enforcement jurisdiction. The existence of an agency to regulate building inspection in those areas indicates that the level of construction in such areas is sufficiently high to justify the cost of regulation.

The exemption, or an extension of an exemption, could be effective for a specified period. This limitation would provide assurance of a periodic review and assessment of the exemptions granted. Further, the Secretary is authorized to rescind a grant of

exemption whenever he finds that the level of building construction has increased or other circumstances have changed, so that implementation is feasible and the costs of implementing the Standards are warranted (Section 305(a) of the Act).

### 5.7 Impact on Financing New Construction

Assuming the imposition of sanctions, the Act would affect those who provide Federal financial assistance, including lenders, by prohibiting the use of funds for construction of buildings whose designs are not in compliance with the Standards.

The goal would be to define, as unambiguously as possible, when a construction loan or commitment would be subject to the sanction.

The Federal Government could publish periodically in the Federal Register the current list of exempt jurisdictions and jurisdictions with certified codes. The lender would then need to determine whether the jurisdiction within which the building is to be constructed is on either list. If it is, no further requirements would be attached to the financing to comply with the Standards. If the jurisdiction is not on either list, the lender would have to obtain the declaration by the agency administering the alternate approval process discussed above to qualify for financing.

The analysis and development of the implementation issues in this section of the preamble are presented by DOE as a possible approach for achieving compliance with the Standards. To repeat, the intention of this section is only to provide the public with a perspective on how the Standards might be implemented. Specific implementation rules will be proposed at a later date.

### 6.0 Other Matters

#### 6.1 Environmental Review

As required by Section 7(c)(2), 15 U.S.C. 766(c)(2) of the Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), a copy of this proposed rule was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of this proposed rule on the quality of the environment. The Administrator to date has expressed no comment.

A Draft Environmental Impact Statement (DEIS) was prepared in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). The DEIS has been designated Technical Support Document No. 7 and is

available to the public for comment as noted at the beginning of this preamble. This document also discusses indoor air quality.

### 6.2 Regulatory Analysis

DOE has determined that this proposed rule is significant and is likely to have a major impact. Accordingly, a Draft Regulatory Analysis and a Draft Urban Impact Analysis have been prepared in addition to the environmental analysis discussed in Section 6.1.

A summary of the Regulatory Analysis which is published below, and supporting documentation, consists of (1) an extensive statement of the problem addressed by the regulation, and the mandate for government action; (2) a description and analysis of the reasonable and feasible policy alternatives to meeting that mandate, including the legislative authority, institutional and other impacts of the standards; and (3) a comparative analysis of the impacts of the alternatives, quantified when possible.

The discussion in (3) also contains an analysis of the effects of the alternatives on: The objectives of national energy policy or energy statutes; the economic well-being of the Nation as a whole, individual industries, levels of government, geographic regions, and demographic groups; compliance and other requirements; competition; other relevant costs and benefits; and the fairness of the distribution of the costs and benefits.

The Draft Regulatory Analysis Summary, published in this section, contains a discussion of:

- Problem and Mandate for Government Action
- Policy Objectives,
- Projected Economic Effects of the Proposed Standards
- Major Alternatives Considered
- The Proposed Approach, and the Reasons for Choosing the Preferred Alternative

The Urban Impact Analysis examines the possible impacts of a proposed program on cities and communities in terms of employment and labor category demand.

The Draft Regulatory Analysis and Draft Urban Impact Analysis are contained in Technical Support Document No. 6, which will be available for public comment as noted at the beginning of this preamble.

This action is in accordance with Executive Order 12044, "Improving Government Regulations," May 1, 1970, 43 FR 18634; DOE Order 2030, "Procedures for the Development and Analysis of Regulations, Standards, and

Guidelines," January 3, 1979, 44 FR 37779; and OMB Circular A-116, "Agency Preparation of Urban and Community Impact Analyses," August 16, 1978, 43 FR 37779.

#### 6.2.1 Problem and Mandate for Government Action

As a basis for the Energy Conservation and Production Act (the Act), Pub. L. 94-385, Congress found that " \* \* \* large amounts of \* \* \* energy are consumed unnecessarily each year in [new] residential and commercial buildings because such buildings lack adequate energy conservation features." (Section 302(a)). To reduce this energy waste, the Act mandated the development and implementation of performance standards for these buildings (Section 302(b)).

One of the major reasons for both Congressional and DOE action is the recognition that over one-third of all energy consumed in the United States is used for space conditioning, lighting and domestic hot water in buildings. This is about the same amount of energy that is imported by the Nation. However, at least 40% of the energy consumed by buildings is wasted because of inefficient building design and equipment.

#### 6.2.2 Policy Objectives

The Act calls for the promulgation of performance standards to achieve in buildings the maximum practicable increases in energy conservation and in the use of renewable resources. Performance standards, as defined by the Act, specify energy consumption goals for buildings without specifying the methods, materials or processes to be used in achieving those goals. The Act also directs that the Standards take account of climatic variations across the Nation, and that they be adequately analyzed in terms of energy efficiency, stimulation of use of nondepletable sources of energy, institutional resources, habitability, economic cost and benefit and impact upon affected groups.

As discussed in detail in Section 2.4.2 of the preamble, the Standards as proposed are projected to promote the use of renewable energy sources, particularly solar energy for heating, cooling and domestic hot water. This would further the Solar Heating and Cooling Demonstration Act of 1974 (Pub. L. 93-409, 43 U.S.C. 5501 *et seq.*) and the Solar Energy Research, Development and Demonstration Act (Pub. L. 93-473, 42 U.S.C. 5551 *et seq.*), whose goals, in part, are to encourage the use of solar energy and other renewable energy resources in buildings.

#### 6.2.3 Projected Economic Effects of the Proposed Standards

DOE finds that the proposed Standards will require new buildings to reduce their design energy requirements by 17% to 52% from 1975-1976 levels, depending on the building type. Energy savings from the Standards are projected to be 0.22 quads annually (0.1 million barrels per day of oil equivalent, MBDOE) by 1985, and 0.46 quads annually (0.2 MBDOE) by 1990. This is in addition to the energy saved by other building energy efficiency improvement programs. The cumulative energy saved between 1980 and 2020 is projected to be 29 quads.<sup>59</sup>

Employment is projected to increase through additional investment in building conservation. It is expected that, cumulatively, 48,000 additional jobs will be created in 1980, 86,000 in 1985, and 70,000 in 1990. The short-term impact on inflation is near zero. Over the long term, the Standards will decrease the rate of inflation by reducing the impact that increased energy prices have on building owners.

Urban impacts were investigated for selected SMSA's in terms of changes in population growth, construction and employment. Employment was analyzed in terms of utilities, services and the construction industry. Employment in the utilities sector was projected to decrease, while that in services and construction was projected to increase in the SMSA's studied.

#### 6.2.4 Major Alternatives Considered were:

- No Federal action to implement the Standards.
- Implementation of less stringent Standards.
- Implementation of more stringent Standards.

The alternative of not implementing the Standards assumes that all improvements in building energy efficiency would come from existing standards such as the HUD Minimum Property Standards or ASHRAE 90-75, from a reaction to rising energy prices, or from independent State and local

<sup>59</sup>The figures presented are based on the proposed Energy Budget Levels and are for net present values and energy savings which include only those building classifications contained in the proposed rule. Restaurants, industrial buildings and mobile homes are excluded. Key assumptions in the analysis are: (1) no updates of the Standards, and (2) the base case (no Federal action) has increasing levels of energy conservation in response to rising energy prices and the commercialization of new energy conservation technology (corresponding to 40% penetration of the HUD Minimum Property Standards for One- and Two-Family Dwellings, by 1980, held constant thereafter, and 62% penetration of ASHRAE 90-75 by 1990).

government action. For comparison, the proposed Standards are projected to use 29 quads less energy than this alternative would between 1980 and 2020. The value of energy saved by implementing the Standards, less increased building construction costs and increased implementation costs, is expected to have a net present value of \$6 billion (evaluated in constant 1978 dollars, using a 10% real discount rate).

Using less stringent Energy Budget Levels, 10.5 quads of energy would be saved between 1980 and 2020 and the national net present value is \$3 billion (1978 dollars). For the more stringent alternative, cumulative energy savings would be 55 quads, with a national net present value of \$3 billion (1978 dollars).<sup>60</sup>

It should be mentioned that more stringent Energy Budget Levels for commercial and multifamily residential buildings, coupled with the proposed Energy Budget Levels for single-family residential buildings, taken together as a single alternative, is projected to conserve 44 quads of energy and have a national net present value of \$7.3 billion. However, DOE determined that the more stringent commercial and multifamily residential Energy Budget Levels exceeded the limits of current knowledge of most designers and would therefore be difficult to achieve in practice.

Other alternatives considered different types of standards, including:

- Use of component, rather than whole building, performance standards.
- Performance standards based on actual, rather than design, energy consumption.
- Energy prices set at levels which would result in savings equal to those of the Standards.
- Information and education programs only.

The use of component, rather than whole building, energy performance standards could possibly entail lower implementation and enforcement costs because many States have already legislated such an approach. However, the performance approach permits the designer to analyze the building as a total system and choose the most cost-effective techniques available to produce an energy efficient building. Furthermore, the use of innovative design techniques is stimulated through the use of the whole building, rather than the component, approach.

<sup>60</sup>The net present value for the stringent alternative declines compared to that of the proposed Standards, in spite of the greater energy savings. This decline occurs because the added cost of the conservation measures exceeds the value of the additional fuel savings.

Performance standards based on actual, rather than design, energy consumption would require a completely different enforcement approach. Enforcement officials would need to determine, directly or by inference, actual energy consumption for individual buildings. This alternative could have the greatest impact on the manner in which building occupants use energy. It would also tend to promote the use of renewable resources in much the same way as the proposed Standards. However, enforcement would be more difficult since local officials would have to contend with the varying ways in which different occupants utilize buildings.

Setting energy prices so as to produce energy savings equal to those of the proposed Standards is possible, but it could place a significant burden on owners of older, less energy-efficient buildings and on low-income citizens who are least able to bear the increase in cost.

The information and education alternative would require that the public exert the demand for energy efficiency in new buildings. It would also require the education of design professionals in the use of energy efficient design techniques. A program to inform and educate consumers and design professionals on the energy and cost consequences of different materials and building design strategies would have to be on a national scale and a long-term basis. It is considered unlikely that a public education program alone could achieve the same energy savings as the proposed Standards.

Comments are invited on the alternatives considered, and on any others which the public feels should be analyzed in the final Regulatory Analysis.

#### 6.2.5 The Proposed Approach

Under the proposed approach, the Design Energy Consumption of a building is determined from its design, an assumed set of operating conditions and pertinent climate factors.

The proposed Standards specify Energy Budget Levels in terms of building design classification, heating fuel type (single-family residences only) and climate conditions. A building design is in compliance with the Standards if its Design Energy Consumption does not exceed the Design Energy Budget specified for its design classification and climate conditions.

The Energy Budget Levels in the proposed Standards are technologically achievable, would conserve substantial amounts of energy compared to current

building designs, and would achieve a net economic benefit both to the Nation and the building owner.

#### 7.0 Opportunities for Public Comment

##### 7.1 Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, and comments to Joanne Bakos, Office of Conservation and Solar Energy, Department of Energy, Docket Number CAS-RM-79-112, Mail Station 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

Comments should be identified on the outside of the envelope, and on the documents themselves, with the designation, "Energy Performance Standards for New Buildings, Docket Number CAS-RM-79-112." Fifteen copies should be submitted. All comments received on or before February 26, 1980, and all other relevant information will be considered by DOE before final action on this rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as fifteen copies from which the information claimed to be confidential has been deleted. DOE shall make a determination on any such claim. This procedure is set forth in 10 CFR 1004.11 (44 FR 1908, January 8, 1979).

##### 7.2 Public Hearings

DOE will hold five public hearings on this proposed rule and the Technical Support Documents, including the Draft Environmental Impact Statement. The hearings will be held at 9:30 a.m., local time, on the dates and at the locations given in the table at the beginning of the preamble.

Any person interested in this proposed rule or any person who is a representative of a group that has an interest in this proposed rule may make a written request to speak at the hearings. All such requests must be received by the date indicated for each hearing in the table at the beginning of the preamble. Requests should be sent to Joanne Bakos at the address given above. A request may be hand-delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments; with the additional notation, "Request to Speak."

The person making the request should briefly describe that person's interest and, if appropriate, state why that person is a proper representative of a group. The person should also give a

concise summary of the proposed oral presentation and should provide a phone number where the person may be reached. Each person selected to be heard will be notified by DOE by the date indicated for each hearing. Those persons selected to be heard must bring fifteen copies of their statements to the hearing. If any person cannot provide fifteen copies, alternate arrangements can be made in advance of the hearing. This should be done in the letter requesting to speak, or by contacting Joanne Bakos at 202-376-1651.

##### 7.3 Conduct of the Hearings

DOE reserves the right to select the persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearings. The length of time for each presentation will be limited, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. These will not be judicial or evidentiary type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision by DOE on the subject matter of a hearing will be based on all the information available to DOE. At the conclusion of all initial oral statements, each person who has spoken will be given the opportunity to make a rebuttal statement, if desired. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any speaker. DOE will determine whether the question is relevant and whether the available time permits it to be presented. The questions should be received at the following addresses by the last working day prior to the hearing: Washington, D.C., hearing: Joanne Bakos, Office of Conservation and Solar Energy, Mail Station 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 (202-376-1651); Kansas City, MO, hearing: Suzanne Mathews, Department of Energy, 324 East 11th St., Kansas City, MO 64108 (816-758-5533); Boston, MA, hearing: Kathy Healy, DOE Region 1, 150 Causeway St., Boston, MA 02114 (617-223-5257); Atlanta, GA, hearing: Dan McAlister, DOE Region 4, 1655 Peachtree St., N.E., Atlanta, GA 30309 (404-881-2696); Los Angeles, CA, hearing: Terry Osborne, Department of Energy, 411 Pine St., San Francisco, CA 94111 (415-558-4953).

Any speaker who wishes to ask a question may submit the question in

writing to the presiding officer. The presiding officer will determine whether time permits the question to be asked.

Any further procedures needed for the conduct of each hearing will be announced by the presiding officer.

A transcript of each hearing will be made and will be retained by DOE. The transcript will be available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays, at the offices listed in the beginning of the preamble. Any person wishing to do so may purchase a copy of a transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates after the first scheduled day may be cancelled in the event no public testimony has been scheduled in advance.

## 8.0 A Guide to the Proposed Rule

### 8.1 Introduction

The proposed rule sets forth the requirement that the Design Energy Consumption of the design of a new building shall not exceed its Design Energy Budget. It discusses the criteria and evaluation methods to be used to determine both the Design Energy Budget and the Design Energy Consumption for a building design.

The Design Energy Budgets are expressed in thousands of Btu's per square foot of gross area per year. They vary by building design classification and climate, and they include different weighting factors for different fuels.

### 8.2 Application of the Proposed Standards to a Typical Building Design Process

This section describes how the proposed Standards might be applied to a typical building design process. The discussion is only for illustration purposes, since the design process varies with building type, as well as local or regional design and construction practices, and since the mechanisms for implementation are not yet available.

The first step would be to select the compliance path desired. Two general compliance paths are described in the proposed rule:

- A performance path, involving determining the Design Energy Consumption for a building design.
- An equivalent path, using an approved building code.

The performance path is the one described most fully in the proposed

rule. The equivalent path assumes the existence of an approved component performance code or other procedure that DOE has determined would result in building designs whose Design Energy Consumptions would be "equivalent" to those that would result from the performance path.

If the equivalent path is taken, the building would be designed to comply with the applicable code. The submittal documents for building code approval would contain required documentation to substantiate compliance with the code. Such equivalent codes have not yet been identified or developed, nor have the detailed steps to be followed been developed (see Section 5.0 for implementation discussion).

### 8.3 The Performance Path

The basic steps in a typical performance path are described below. Applicable sections of the proposed rule and other sections of the preamble are referenced throughout the discussion.

Figure 8-1 shows the basic steps in the typical process. The numbered boxes illustrate the nature of the proposed Standards and how they would be expected to work. The numbers are for reference only and do not necessarily indicate sequence.

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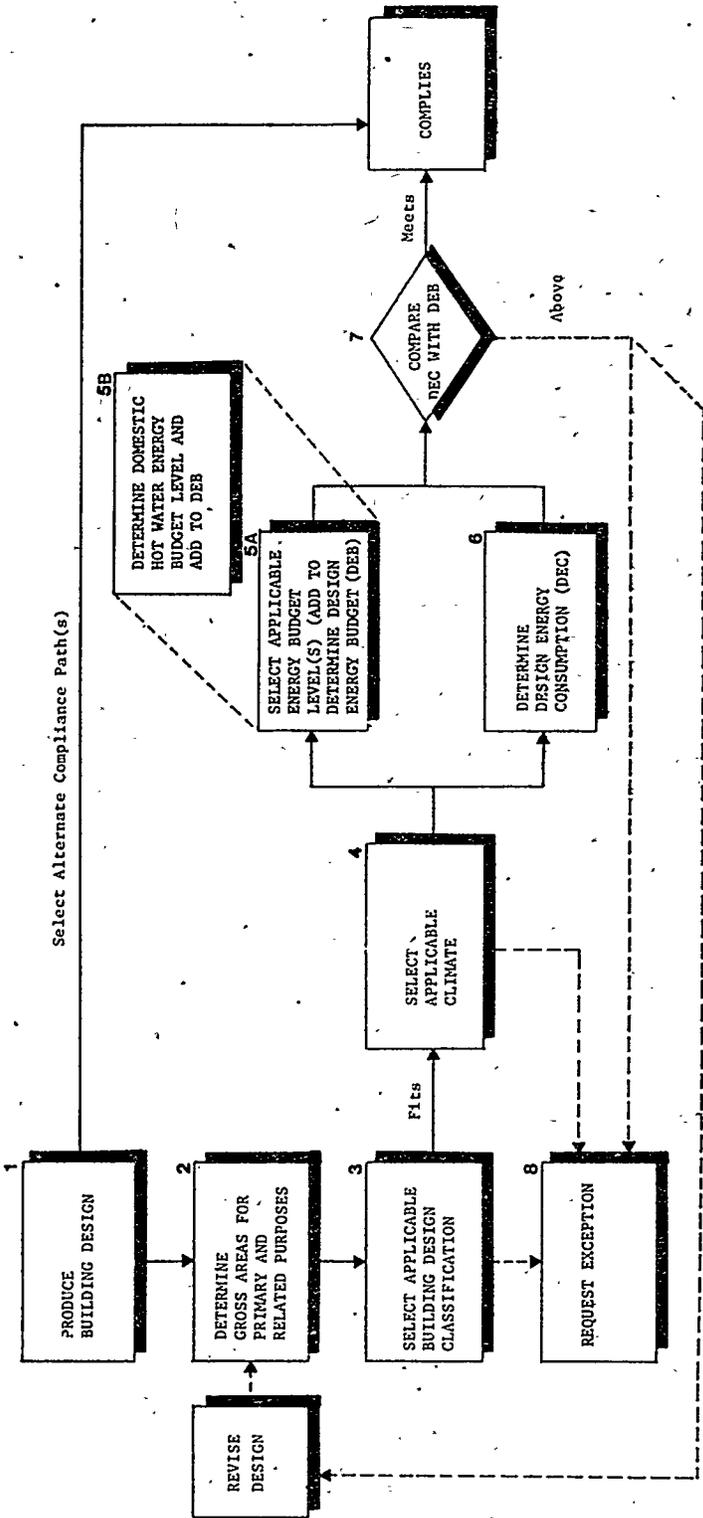


FIGURE 8-1: APPLICATION OF PROPOSED STANDARDS TO TYPICAL BUILDING DESIGN PROCESS

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- Produce building design (Box 1).

This is the set of detailed plans and specifications which describe the building, its systems and components and their interconnections.

- Determine gross area for primary and related purposes (Box 2).

Use the definition of gross area in proposed § 435.02. Then, for a commercial or multifamily residential building design, compute the total area devoted to the primary building function(s) and related purposes (see proposed § 435.04 for definitions of the "primary function(s) and related purposes"). For a single-family residential building, determine the gross area of the residence.

- Select applicable building design classification based on the gross area determination (Box 3).

Compare the total gross area computed above to the building design and function classifications in proposed § 435.04. If the percentage of total gross area for primary and related purposes is greater than or equal to that contained in one of the classifications, proceed to the selection of applicable climate conditions. If the total is less, follow the procedure for multifunctional buildings, contained in Appendix I of the proposed rule. For single-family residential buildings, simply determine the appropriate classification (attached or detached) from the definitions in proposed § 435.04. For a building design that does not fit any of the building design classifications or the definition of a multifunctional building, an exceptions procedure will be provided (Box 8).

- Select applicable climate for the selected building design classification (Box 4).

If the building site lies within one of the 78 SMSA's or cities listed in the table in Appendix II of the proposed rule, then the climate conditions for that location shall apply. If the location is not listed in that table, follow the procedures prescribed in Appendix II to choose one of the 78 SMSA's or cities whose climate conditions most closely approximate the climate conditions in the locale of the building site.

If there is no SMSA or city meeting the above criteria, and if it can be demonstrated that the building design is strongly dependent upon local climatology for successful operation, an exceptions procedure will be provided (Box 8).

- Determine applicable Design Energy Budget (Box 5A).

The tables in Appendix I of the proposed rule provide the proposed Energy Budget Levels for building design (or function) classifications. Tables I-1 and I-2 are for single-family residential

building designs and Table I-3 is for commercial and multifamily residential building designs.

For single-function commercial and multifamily residential buildings, consult Table I-3 for the appropriate design classification and SMSA or city and read off the Design Energy Budget for the building design.

For multifunctional commercial and multifamily residential buildings, use Table I-3 in the same manner as above, but use the information obtained from the table as Energy Budget Levels for the functions in the building and then calculate a weighted average to determine the Design Energy Budget for the building design.

For single-family residential building designs, first consult Table I-1 to determine the space conditioning portion of the Design Energy Budget (in MBtu/sq.ft./yr.). Then, consult Table I-2 (Box 5B) to obtain the domestic hot water portion of the Design Energy Budget (in MBtu/yr./residence). Convert this number to MBtu/sq. ft./yr by dividing it by the gross area of the residence. Finally, add this to the first number to arrive at the Design Energy Budget for the building design.

The above procedure indicates that the Design Energy Budget is determined after the building design is accomplished. This is in accord with the typical building code compliance process. Also, the precise gross area of the building design is not available to determine the building design classification until the building design has been produced.

However, it seems likely that a prudent designer, builder or owner would want to know the general Design Energy Budget target from the outset of the design process. This could still be accomplished using the above procedures, but it would be based on the general area information usually available from the program of design requirements for the building (e.g., "a 1600 sq. ft. house," or "a 100,000 sq. ft. office building with 90,000 sq. ft. of office and related spaces and a 10,000 sq. ft. computer center").

The preliminary estimate of the Design Energy Budget would then be used throughout the design process as an energy target, much as a cost budget is used throughout the design process as a cost target. It would be refined for the compliance process described here, once the building design is completed.

Many key design decisions which have major impacts on energy requirements occur early in the design process (location on the site, basic shape, structure and materials, initial criteria and selection of heating, cooling,

ventilating and lighting systems). A preliminary Design Energy Budget can be used as a guide for such design decisions.

- Determine Design Energy Consumption (Box 6).

Use the Standard Evaluation Technique or an approved alternate evaluation technique<sup>64</sup> to determine the Design Energy Consumption of the Building design.

The Evaluation technique is the key element in using the performance path to determine if a building design is in compliance with the Standards. The Standard Evaluation Technique is the one provided in the proposed rule and is the one against which other evaluation techniques will be compared to see if they can be approved as alternates.

Alternate evaluation techniques may be either computer based techniques or techniques based on hand calculation methods. In either case, appropriate criteria and procedures for their use would be included. Proposed § 435.06 contains a procedure for requesting approval of an evaluation technique as an alternate for use with the Standards.

Use of the Standard Evaluation Technique requires that certain specific data be used: The climate data selected in Box 4; building design data; Standard Building Operating Conditions, which are provided by DOE for each building design classification and are included in Technical Support Document No. 1, The Standard Evaluation Technique; and weighting factors expressed by fuel type.

The weighting factors were developed by DOE (see Section 2.4.1) and used as a way of expressing the proposed Energy Budget Levels. They must therefore be used in arriving at the Design Energy Consumption of a building design. This is done by: (1) Determining the design energy requirements of the building design (in MBtu/sq. ft./yr.) by fuel type; (2) multiplying each of the fuel-related design energy requirements by the applicable weighting factor; and then (3) adding all of the weighted figures to arrive at the Design Energy Consumption for the building design. The design energy requirements of the building design are determined using the calculation methods and associated instructions in the Standard Evaluation Technique.

The use of a renewable energy resource will result in a "credit" toward meeting the design goal, as that energy

<sup>64</sup> See Section 4.0 of the preamble for a brief description of the Standard Evaluation Technique, and Technical Support Document No. 1, The Standard Evaluation Technique, for a complete description and a full discussion of related issues.

is not counted in determining the Design Energy Consumption.

- Compare Design Energy Consumption with Design Energy Budget (Box 7)

If the Design Energy Consumption calculated in the previous step does not exceed the Design Energy Budget, then the building design is in compliance with the Standards, the process is complete, and the appropriate documentation for building code approval can be submitted.

Where a building's Design Energy Consumption exceeds its Design Energy Budget, the building design would have to be modified in order for it to be in compliance with the Standards.

For those building designs which have special health and fire safety requirements or considerations, or which have systems or components that cannot be evaluated in a reasonable manner by the Standard Evaluation Technique, exceptions procedures will be provided (Box 8).<sup>62</sup>

#### 8.4 Designing Buildings for Compliance With the Proposed Standards

This section describes how building designs might change from current practice in complying with the proposed Standards.

Buildings use energy for building functions and human occupancy. Such uses include lighting, domestic hot water, and vertical transportation. In addition, when the building design is not able to temper climate extremes, energy is used for heating, cooling, and ventilating systems to maintain comfort and health conditions. Therefore, the first objective would be to design the building to minimize the demand for the use of such systems. A second objective would be to use the most energy efficient and cost-effective systems appropriate for the building and the climate.

The proposed Standards would accelerate existing trends toward:

- Less demand for energy using systems.
- Buildings which are more sensitive to climate and site energy conservation opportunities, and are designed to minimize negative site and climate factors. (Buildings will work more in harmony with the surrounding climate and site, to make use of heat gain, heat loss, available light, and outside air in the comfort range. This might include such techniques as passive solar design strategies, cost-effective levels of insulation, and double or triple glazing.)

- More efficient heating, cooling, ventilating and lighting systems.
- More sophisticated controls, both manual and computerized, for more efficient building systems operation.
- Greater use of active solar and other advanced domestic hot water systems, especially in residential buildings.

A performance standard provides significant flexibility and opportunity for tradeoffs among the subsystems and components of a building design in order to meet an overall energy goal. An owner's requirements for a building design could be achieved with a number of different design possibilities.

Consider as an example three new single-family residences that might be designed for the same block in the suburb of a midwest city. The houses could all be designed to comply with the proposed Standards; however, they could all be different:

- The first house could rely on traditional energy conservation strategies and emphasize insulation, triple glazing, and efficient heating and cooling systems. Windows would be placed equally on all four sides of the house.
- The second house could include passive solar heating and cooling techniques (primarily, the relocation of windows to the south wall, along with appropriately located building mass and shading devices), in addition to traditional energy conservation measures such as added insulation and double glazing.
- The third house could emphasize the addition of an active solar domestic hot water system, plus some traditional conservation measures, such as added insulation and double glazing.

All three houses could be generally similar-in style, they could all meet the same budget, but they would each use a different approach.<sup>63</sup> The design of commercial and multifamily residential buildings also generally involves many options for design solutions which meet the requirements of the Standards.<sup>64</sup>

Thus, the standards would allow energy objectives and design flexibility to be combined.

(Energy Conservation Standards for New Buildings Act of 1976, as amended, (42 U.S.C. 6831-6840), enacted as Title III of the Energy Conservation and Production Act and Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*))

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by establishing Part 435 as set forth below.

Issued in Washington, D.C., this 14th day of November 1979

Maxine Savitz,  
Acting Assistant Secretary, Conservation and Solar Energy.

Chapter II of Title 10, Code of Federal Regulations, is amended by establishing a new Part 435 as follows:

## PART 435—ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS

### Subpart A—Performance Standards

Sec.

- 435.01 Purpose and scope.
- 435.02 Definitions.
- 435.03 Requirements for the performance standards.
- 435.04 Building design and function classification.
- 435.05 Selection of applicable climate.
- 435.06 Procedure for establishing alternate evaluation techniques.

### Subpart B—Implementation [Reserved]

### Subpart C—Administrative Review [Reserved]

- Appendix I: Energy Budget Level Tables.
- Appendix II: Climate Tables.
- Appendix III: Approved Alternate Evaluation Techniques [Reserved].
- Appendix IV: Model Codes and Standards [Reserved].

Authority: Energy Conservation Standards for New Buildings Act of 1976, as amended, (42 U.S.C. 6831-6840), enacted as Title III of the Energy Conservation and Production Act; Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

### Subpart A—Performance Standards

#### § 435.01 Purpose and scope.

This part establishes energy performance standards for new residential and commercial buildings. It also establishes the requirements for implementation of the standards. The purpose of the energy performance standards is to achieve the maximum practicable improvements in energy efficiency in new buildings. The standards will be implemented to:

- (a) Redirect Federal policies and practices to assure that reasonable energy conservation features will be incorporated into the designs of new commercial and residential buildings receiving Federal financial assistance;
- (b) Achieve in the designs of new commercial and residential buildings the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy; and
- (c) Encourage States and local governments to adopt and enforce such standards through their existing building codes and other construction control mechanisms, or to apply them through a special approval process.

<sup>62</sup> For a summary list of anticipated exceptions leading to administrative review procedures, see Section 1.4.7 of the preamble.

<sup>63</sup> For further discussion of some possible design alternatives for single-family residences, see Section 3.3.7 of the preamble and Table 3-1.

<sup>64</sup> See footnote 35.

**§ 435.02 Definitions.**

For purposes of this part: (a) "British thermal unit" means the amount of heat required to raise the temperature of 1 pound of water by 1 degree Fahrenheit at or near 39.2 degrees Fahrenheit at an atmospheric pressure of 14.73 pounds per square inch absolute.

(b) "Btu" means British thermal unit.

(c) "Building code" means a legal instrument which is in effect in a State or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered in conformance with the law and suitable for occupancy and use.

(d) "Building design" means the architectural and engineering drawings and specifications used for the construction of a new building.

(e) "Commercial building" means a new building other than a residential building, including any building developed for industrial or public purposes.

(f) "Design Energy Budget" means the maximum allowable Design Energy Consumption, expressed as MBtu/sq. ft./yr, for a building design for a new building, without specification of the methods, materials or processes to be employed in the design.

(g) "Design Energy Consumption" means the calculated annual energy consumption, expressed as MBtu/sq. ft./yr, for the gross area of a building design, calculated using the Standard Evaluation Technique specified by DOE, or an approved alternate evaluation technique.

(h) "DOE" means the U.S. Department of Energy.

(i) "Energy Budget Level" means a value, expressed in MBtu/sq. ft./yr, for a building classification for a specific climate and location developed in the tables contained in Appendix I.

(j) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the Executive Branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(k) "Federal building" means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements.

(l) "Function" means a designated type of activity for an area identified as part of a building design.

(m) "Gross area" means the sum of all floor areas, except unheated basements in single-family residences or parking areas, measured in square feet, enclosed in a building design, measured from the exterior face of exterior walls at the

floor line, disregarding protrusions beyond the nominal plane of the wall, or from the centerline of common walls separating buildings.

(n) "MBtu" means thousands of British thermal units.

(o) "MBtu/sq. ft./yr" means MBtu per square foot of gross area per year.

(p) "New building" means any structure (1) which includes or will include a heating or cooling system, as defined in 10 CFR 450.41, or both, or a domestic hot water heating system, and (2) for which the construction commences after the final rule becomes effective, with the exception that mobile homes, industrial buildings and restaurants are excluded from this definition.

(q) "Residential building" means a new building which is designed to be constructed and developed for residential occupancy.

(r) "Standard Metropolitan Statistical Area" means an area defined by the Department of Commerce in its publication, "SMSA, 1975," Division of Standards and Policy, ed. 1975, with revisions.

(s) "Standard Evaluation Technique" means the criteria, procedures and energy calculation methods used for determining the Design Energy Consumption of a new building design, and consists of Appendix V of the DOE Technical Support Document, "The Standard Evaluation Technique," Administrative Record Number 9561.00 (November 1979), and the energy analysis programs shown in Table 1.

**§ 435.03 Requirements for the performance standards.**

(a) The Design Energy Consumption of the building design of a new building shall not exceed its Design Energy Budget.

(b) The Design Energy Budget shall be determined by: (1) Classifying the building design in accordance with § 435.04;

**TABLE 1.—SOURCES OF THE STANDARD EVALUATION TECHNIQUE COMPUTER PROGRAMS**

I. DOE-2.0 available from: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22150.

**Item and Order No.**

1. DOE-2 Magnetic Tapes, Program, Sample Runs, Weather Data (Sold only as a set)—P-B-292250

2. DOE-2 Manual Set

Volume 1: Users Guide—P-B-292251

Building Design Language Summary—P-B-292251-1

Sample Run Book

Volume 2: Reference Manual—P-B-292251-2

Volume 3: Program Manual (Sold only as a set)—P-B-292251-3

II. TRNSYS-10.1 available from: TRNSYS Coordinator, University of Wisconsin-Madison, Solar Energy Laboratory, 1500 Johnson Drive, Madison, WI 53706, Phone: 608-263-1586.

1. User's Manual Standards Addendum to User's Manual TRNSYS on Magnetic Tape

2. User's Manual Standards Addendum to User's Manual TRNSYS on Card Deck

III. DEROB-3.0 available from: Solar Energy Research Institute, ATTN: Mr. M. Connelly, 1536 Cole Boulevard, Golden, CO 80401.

1. Volume 1. User's Manual

2. Volume 2. Explanatory Notes of Theory

3. Standards Addendum

4. DEROB-3.0 Magnetic Tape

(2) Selecting the appropriate climate data for the location of the new building in accordance with § 435.05; and

(3) Determining the MBtu/sq. ft./yr permitted for the building design from the Energy Budget Level tables and instructions contained in Appendix I.

(c) The Design Energy Consumption shall be calculated in accordance with: (1) The Standard Evaluation Technique, or (2) an approved alternate evaluation technique as provided in Appendix III.

(d) For purposes of this subpart, a building design which meets the requirements of a model code or standard listed in Appendix IV shall be deemed to have a Design Energy Consumption which does not exceed its Design Energy Budget.

**§ 435.04 Building design and function classifications.**

(a) A building design shall be classified as one of the following:

(1) "Clinic," a building design in which at least 90 percent of the gross area is primarily for use in outpatient medical, surgical or psychiatric diagnosis and treatment and related purposes, without provisions for overnight

accommodations and associated care. Related purposes in this classification include office spaces, storage areas, public waiting rooms, toilet rooms, corridors, stairwells, laboratory spaces, equipment spaces, shafts and lobbies.

(2) "Community center," a building design in which at least 98 percent of the gross area is primarily for use in public non-athletic recreational activities, meetings, lectures, conferences, exhibitions, games, and related purposes. Related purposes in this classification include office spaces, storage areas, public waiting rooms, toilet rooms, corridors, stairwells, equipment spaces, shafts and lobbies.

(3) "Gymnasium," a building design in which at least 97 percent of the gross area is primarily for use in physical education activities, recreational athletic activities and athletic entertainment events and related

purposes. Related purposes in this classification include indoor tennis courts, handball courts, racquetball courts, running tracks, squash courts, shower and locker areas, offices, public waiting rooms, corridors, stairwells, toilet areas, storage rooms and spaces, equipment spaces, shafts, lobbies and seating areas.

(4) "Hospital," a building design in which at least 80 percent of the gross area is primarily for use in rendering outpatient and inpatient medical, surgical or psychiatric diagnosis and treatment and related purposes, with provisions for overnight accommodations and associated care. Related purposes in this classification include office spaces, classrooms, public waiting rooms, toilet rooms, corridors, stairwells, storage areas, kitchens and food services spaces, meeting and consultation rooms, equipment areas, laundry areas, supply areas, laboratory spaces, lobbies and shafts.

(5) "Hotel/motel," a building design in which at least 80 percent of the gross area is primarily for rental, on a transient basis, of separate rooms or sets of rooms as sleeping accommodations, and related purposes. Related purposes in this classification include office spaces, meeting rooms and conference rooms, storage rooms and spaces, public waiting rooms, corridors, stairwells, lobbies, equipment areas and shafts.

(6) "Industrial building," a building design in which at least 50 percent of the gross area is primarily for carrying out one of the industrial activities referred to in the 20 two-digit categories listed in the Standard Industrial Classification System as contained in the Standard Industrial Classification Manual, United States Executive Office of the President, Office of Management and Budget, 1972.

(7) "Mobile home," a structure transportable in one or more sections, which measures at least eight body feet in width and 32 body feet in length, erected on a permanent chassis with or without a permanent foundation and designed to be used as a dwelling unit when connected to the required utilities and includes plumbing, heating, air-conditioning and electrical systems contained therein. This classification does not include structures which are self-movable.

(8) "Nursing home," a building design in which at least 83 percent of the gross area is primarily for the lodging, boarding and medical or health care, on a 24-hour basis, of persons who, because of physical or mental incapacity, may be unable to provide for their own safety or personal needs, and related purposes. Related purposes in this classification

include office areas, meeting rooms, consultation rooms, storage areas, stairwells, shafts, lobbies, corridors, public toilet rooms, equipment rooms and supply areas.

(9) "Office, large," a building design for other than a store or shopping center with a gross area of 50,000 square feet or more, in which at least 86 percent of the gross area is primarily for the transaction of business or the rendering of professional services, and related purposes. Related purposes in this classification include storage areas, public toilet rooms, stairwells, lobbies, shafts, supply areas, equipment rooms, meeting and consultation rooms.

(10) "Office, small," a building design for other than a store or shopping center with a gross area of less than 50,000 square feet, for which at least 87 percent of the gross area is primarily for the transaction of business or the rendering of professional services, and related purposes. Related purposes in this classification include storage areas, public toilet rooms, stairwells, lobbies, shafts, supply areas, equipment rooms, meeting and consultation rooms.

(11) "Restaurant," a building design in which 93 percent of the gross area is primarily for the preparation, sale and consumption, on or off the premises, of food and drink, and related purposes. Related purposes in this classification include equipment areas, offices, lobbies, waiting rooms, refrigeration areas, stairwells, shafts, supply areas, kitchens and heating areas.

(12) "Residential, multifamily high-rise," a residential building design, five or more stories in height which is not single-family attached as defined in paragraph (a)(14) of this section and in which at least 90 percent of the gross area is primarily to provide complete and independent living units, and related purposes. Related purposes in this classification include stairwells, shafts, public toilet rooms, lobbies, corridors, equipment areas, storage areas and laundry rooms.

(13) "Residential, multifamily low-rise," a residential building design, four or fewer stories in height, which is not single-family attached as defined in paragraph (a)(14) of this section and in which at least 92 percent of the gross area is primarily to provide complete and independent living units, and related purposes. Related purposes in this classification include stairwells, shafts, public toilet rooms, lobbies, corridors, equipment areas, storage areas and laundry rooms.

(14) "Residential, single-family attached," a building design that provides a complete and independent living unit for a single family and in

which the unit is structurally connected, without a hallway or corridor, in the horizontal dimension only to not less than one other unit.

(15) "Residential, single-family detached," a building design that provides a complete and independent living facility for a single family and is not structurally connected in any dimension to any other unit.

(16) "School, elementary," a building design in which at least 84 percent of the gross area is primarily for academic or vocational instruction, learning or care for up to and including the eighth grade, and related purposes. Related purposes in this classification include offices, libraries, classrooms, storage areas, toilet rooms, waiting rooms, auditoriums, gymnasiums, equipment areas, stairwells, lobbies, shafts and supply areas.

(17) "School, secondary," a building design in which at least 84 percent of the gross area is primarily for academic or vocational instruction, learning or care for any grade above the eighth grade, and related purposes. If a school building includes grades above and below the eighth grade, it will be considered a secondary school. Related purposes in this classification include offices, libraries, classrooms, storage areas, toilet rooms, waiting rooms, auditoriums, gymnasiums, equipment rooms, stairwells, lobbies, shafts and supply areas.

(18) "Shopping center," a building design, other than a store or office, serving more than one tenant, in which at least 78 percent of the gross area is designed for the display and sale of merchandise, the transaction of business or the rendering of professional services, and related purposes. Related purposes in this classification include common public circulation areas that may or may not be covered, stock and storage areas, public toilet rooms, stairwells, lobbies, shafts, supply areas, equipment rooms, meeting and consultation rooms.

(19) "Store," a building design in which at least 98 percent of the gross area is designed primarily for the display and sale of merchandise, the transaction of business or the rendering of professional services, and related purposes, but not including a common public circulation area. Related purposes in this classification include stock and storage rooms, stairwells, lobbies, shafts, supply areas, public toilet rooms, equipment rooms, meeting and consultation rooms.

(20) "Theater/auditorium," a building design in which at least 87 percent of the gross area is designed primarily for the showing of plays, operas, motion pictures, concerts and other similar

forms of entertainment, and related purposes. Related purposes in this classification include storage areas, public toilet rooms, stairwells, lobbies, shafts, supply areas, equipment rooms, meeting and consultation rooms.

(21) "Warehouse," a building design in which at least 97 percent of the gross area is designed primarily for the climate controlled storage or sheltering of goods, merchandise, products, foodstuffs or vehicles, and related purposes. Related purposes in this classification include office areas, toilet rooms, equipment areas, lobbies, waiting rooms, stairwells and shafts.

(22) If the building design of a new building does not meet the terms of a definition contained in paragraphs (a)(1) through (21) of this section, it shall be classified as "OTHER."

(b) For a building design for a multifunctional new building, the functions shall be classified in accordance with § 435.04(a).

#### § 435.05 Selection of applicable climate.

(a) If the new building is to be located within an SMSA or city listed in Appendix I, the climate data of that SMSA or city shall be selected.

(b) If the new building is not to be located within an SMSA or city listed in Appendix I, the climate data which most closely approximates the climate of the SMSA or city in which the new building will be located shall be selected. This selection shall be made in accordance with the instructions and tables given in Appendix II, Climate Tables.

#### § 435.06 Procedure for establishing alternate evaluation techniques.

(a) A person may submit a written application to DOE on an application form to be provided by DOE, requesting approval of a procedure as an alternate evaluation technique.

(b) After DOE receives an application and any additional information requested, DOE shall determine whether the procedure submitted is acceptable as an alternate evaluation technique.

(c) If DOE determines that the procedure is likely to produce results equivalent to the Standard Evaluation Technique, DOE shall approve the procedure, with such limitations or qualifications as DOE shall find appropriate, and shall give public notice of its inclusion in Appendix III by publication in the Federal Register.

### Subpart B—Implementation [Reserved]

### Subpart C—Administrative Review [Reserved]

#### Appendix I: Energy Budget Level Tables.

1. *General.* To use these tables, the user must determine the appropriate building design classification under § 435.04. If the building design is classified as residential, single-family attached or detached, under § 435.04(a)(14) or (15), the Residential Energy Budget Level tables (Tables I-1 and I-2) shall be used. For any other classification, the commercial and multifamily residential Energy Budget Level table (Table I-3) shall be used. In using either set of tables, the user must also select the appropriate climate conditions under § 435.05.

2. *Use of the single-family residential Energy Budget Level tables.* If the building design is classified under the provisions of § 435.04(a)(14) or (15), add two Energy Budget Levels to determine the Design Energy Budget: (1) The Energy Budget Level for heating and cooling the structure, and (2) the Energy Budget Level for heating domestic hot water. The following steps shall be used:

(1) From Table I-1, select the appropriate space heating Energy Budget Level for the building type for the SMSA or city selected under § 435.05 and the fuel type determined in 1 above. If a renewable resource is used exclusively (i.e., there is no nonrenewable energy supplemental system), select any fuel type.

(2) Use the climate conditions determined under § 435.05 and the fuel type selected in (1) to select the appropriate Energy Budget Level for heating and cooling from Table I-1.

(3) Calculate the gross area of the building design.

(4) Identify whether gas, oil, or electricity is the fuel that will be used to provide the energy for heating domestic hot water. If a renewable resource is used exclusively (i.e., there is no nonrenewable energy supplemental system), select one of the aforementioned fuel types.

(5) From Table I-2, select the appropriate domestic hot water factor for the fuel type selected in (4).

(6) Divide the domestic hot water factor from (5) by the gross area of the building design from (3).

(7) Add the results of (2) and (6). This sum is the Design Energy Budget.

3. *Use of commercial and multifamily residential Energy Budget Level tables—(a) Single-function buildings.* If the building design for a new building is

classified under the provision of § 435.04(a)(1) through (21) other than (14) and (15), use the Energy Budget Level provided in Table I-3.

(b) *Multifunction buildings.* If the building design is classified "OTHER" under § 435.04(a)(22), calculate the Design Energy Budget for that building design in the following manner:

(1) Calculate the gross area of the building design.

(2) Identify the building function classifications contained in § 435.04(a).

(3) Determine the square feet of gross area for each of the function classifications identified in (2), including related purposes such as lounges, hallways, entrances and lobbies associated with the function. Include as part of another function the area of any function for which the square feet of gross area is less than 15 percent of the gross area but not in excess of 1,000 square feet.

(4) For each of the function classifications determined in (2), select from Table I-3 the Energy Budget Level appropriate for the location of the new building.

(5) Sum the square feet of gross area for each function for which there is an Energy Budget Level in Table I-3. If this sum is less than 50 percent of the gross area, the building design has no Design Energy Budget and is excepted.

(6) For each function for which there is an Energy Budget Level, multiply the level selected in (4) by the square feet of gross area for that function, from (3).

(7) Sum the products calculated in (6) and divide the resultant sum by the resultant area calculated in (5).

(8) The result of (7) is the Design Energy Budget for a multifunctional building design.

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Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Alabama	Birmingham	27.1	29.8	26.7	20.6	22.5	30.4
	Mobile	26.0	26.7	26.7	21.5	22.1	20.5
Arizona	Phoenix	29.2	30.2	30.1	24.0	24.8	23.3
California	Bakersfield	25.0	26.8	24.6	19.6	20.9	18.5
	Fresno	24.4	26.7	23.6	18.6	20.2	17.5
	Los Angeles	14.1	14.8	12.7	11.4	11.9	9.2
	Oakland	13.8	16.0	10.9	9.6	11.1	7.3
	Sacramento	22.3	25.0	21.0	16.6	18.4	15.4
	San Diego	15.2	15.5	14.4	12.7	13.0	10.7
	San Francisco	14.2	16.7	11.3	9.7	11.4	7.6
	Denver	33.7	40.3	38.4	24.6	29.5	29.2
Connecticut	Bridgeport	33.3	39.3	36.8	24.4	28.8	27.9
	Hartford	37.1	44.2	43.5	27.4	32.8	33.5
D. C.	Washington	31.2	35.7	32.4	23.1	26.3	24.3
Florida	Jacksonville	26.9	27.6	27.9	22.3	22.9	21.4
	Miami	34.3	34.4	37.1	29.0	29.1	29.1

Note: Cooling is assumed to be provided by electricity in all cases

Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr) (CONT'D)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Florida	Tampa	28.6	28.7	30.9	24.5	24.7	24.0
Georgia	Atlanta	26.3	29.1	25.7	19.8	21.8	19.2
Idaho	Boise City	35.1	41.7	40.0	25.8	30.7	30.6
Illinois	Chicago	39.1	46.5	46.6	29.2	34.8	36.0
	Glenview	40.0	47.4	47.6	30.0	35.6	36.8
Indiana	Indianapolis	39.0	46.1	45.6	29.2	34.4	35.1
Kansas	Dodge City	28.3	32.9	32.8	37.9	44.1	42.8
Kentucky	Louisville	32.9	38.1	35.2	24.3	28.0	26.6
Louisiana	Baton Rouge	26.3	27.1	27.0	21.7	22.3	20.7
	Lake Charles	28.0	29.3	28.5	22.6	23.6	21.7
	New Orleans	27.9	29.3	28.3	22.4	23.5	21.5
Maine	Portland	44.6	54.3	46.8	34.6	42.2	46.6
Massachusetts	Boston	36.3	43.2	42.1	26.9	32.0	32.2
Michigan	Detroit	40.8	48.7	49.8	30.7	36.7	38.6
Minnesota	Minneapolis	56.9	68.3	80.2	45.4	54.6	64.0
Mississippi	Jackson	28.8	31.0	28.9	22.5	24.1	21.8
Missouri	Columbia	36.8	42.8	41.0	27.4	31.8	31.3
	Kansas City	37.5	43.3	41.5	28.0	32.3	31.7

Note: Cooling is assumed to be provided by electricity in all cases

Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr) (CONT'D)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Missouri	St. Louis	38.0	44.2	42.7	28.4	32.9	32.7
Montana	Great Falls	45.1	54.7	59.6	34.6	42.1	46.9
Nebraska	Omaha	41.6	49.2	50.0	31.4	37.1	38.7
Nevada	Las Vegas	30.7	32.8	31.3	24.3	25.8	23.8
New Jersey	Newark	33.7	39.2	36.5	24.9	28.8	27.7
New Mexico	Albuquerque	31.6	63.4	33.1	23.3	36.4	24.9
New York	Albany	44.9	54.1	58.2	34.3	41.5	45.6
	Binghamton	48.2	58.3	65.2	37.4	45.4	51.5
	Buffalo	41.3	49.8	51.9	31.1	37.7	40.4
	New York	31.0	36.0	32.7	22.7	26.3	24.6
No. Carolina	Raleigh	28.5	32.3	28.7	21.2	23.8	21.4
North Dakota	Bismarck	63.0	76.4	95.6	51.8	62.9	77.2
Ohio	Akron	39.6	47.4	48.0	29.7	35.5	37.1
	Cincinnati	34.8	40.6	38.2	25.8	29.9	29.0
	Cleveland	41.3	49.4	50.9	31.1	37.3	39.5
	Columbus	39.8	47.2	47.4	29.8	35.4	36.6

Note: Cooling is assumed to be provided by electricity in all cases

Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr) (CONT'D)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Oklahoma	Oklahoma City	33.0	37.2	34.3	24.7	37.0	25.9
	Tulsa	31.2	35.0	31.9	23.4	26.1	24.0
Oregon	Medford	25.8	30.5	26.0	18.3	21.7	19.2
	Portland	25.3	30.5	26.0	17.8	21.4	19.2
Pennsylvania	Allentown	35.0	41.5	39.8	25.8	30.6	30.3
	Philadelphia	35.7	41.8	39.8	26.5	30.9	30.3
	Pittsburgh	36.7	43.6	42.4	27.2	32.3	32.5
So. Carolina	Charleston	26.3	28.3	26.1	20.6	22.0	19.6
Tennessee	Memphis	29.7	32.9	29.9	22.5	24.8	22.4
	Nashville	29.1	32.8	29.3	21.7	24.3	21.9
Texas	Amarillo	30.7	35.3	31.8	22.7	25.9	23.9
	Brownsville	31.6	31.8	34.5	27.1	27.3	26.9
	Dallas	31.7	33.9	32.5	25.1	26.6	24.7
	El Paso	27.8	30.3	27.6	21.3	23.1	20.7
	Fort Worth	29.0	31.1	29.2	22.8	24.2	22.1
	Houston	28.5	29.7	29.2	23.1	24.0	22.3
	Lubbock	29.4	33.1	22.2	22.0	24.6	22.9

Note: Cooling is assumed to be provided by electricity in all cases

Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr) (CONT'D)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Texas	San Antonio	29.5	31.1	30.1	23.6	24.8	22.9
Utah	Salt Lake City	40.6	48.2	48.7	30.5	36.2	37.6
Vermont	Burlington	49.1	59.6	67.5	38.3	46.7	53.5
Virginia	Norfolk	27.0	30.3	26.7	20.1	22.4	19.8
	Richmond	33.1	38.2	35.3	24.5	28.1	26.7
Washington	Seattle	25.6	31.3	26.5	18.6	22.7	19.6
	Spokane	38.3	46.5	47.6	28.5	34.8	36.9
West Virginia	Charleston	33.1	38.5	35.7	24.3	28.3	27.0
Wisconsin	Madison	45.4	54.8	59.6	34.8	42.2	46.8
	Milwaukee	45.3	54.8	59.4	34.8	42.1	46.7
Wyoming	Cheyenne	41.1	49.9	52.5	31.0	37.8	41.0

Note: Cooling is assumed to be provided by electricity in all cases

Table I-2: DOMESTIC HOT WATER ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ yr./ unit)

Gas	Oil	Electric
29,500	42,500	54,600

Note: Divide by gross area of the new building and add the result to appropriate heating and cooling Energy Budget Level from Table I-1.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High Rise	Multifamily Low Rise	Nursing Home	Office Large	Office Small	School Elementary	School Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Alabama	Birmingham	123	107	127	353	166	114	110	161	113	101	89	117	181	142	139	53
	Mobile	142	129	147	406	192	127	132	187	131	116	96	133	207	166	162	47
Arizona	Phoenix	146	133	152	406	196	131	136	192	134	119	100	137	212	171	168	49
California	Bakersfield	123	109	127	358	167	113	112	162	113	100	86	116	181	143	140	48
	Fresno	120	105	123	353	163	112	108	158	111	98	85	114	178	139	136	50
	Los Angeles	112	101	115	364	157	103	103	151	106	91	74	106	171	132	126	42
	Oakland	108	93	108	353	150	102	94	143	101	87	75	103	164	125	119	50
	Sacramento	118	102	120	353	160	110	104	154	108	96	84	112	175	136	132	52
	San Diego	114	103	117	364	158	104	106	153	107	92	75	107	172	134	128	40
	San Francisco	108	92	109	353	150	103	94	143	101	87	76	103	165	125	119	51
Colorado	Denver	122	98	123	330	162	119	100	156	109	100	97	118	178	137	135	71
Connecticut	Bridgeport	128	105	130	353	170	123	106	156	115	105	100	123	186	144	142	71
	Hartford	125	101	127	338	165	122	102	159	112	103	100	121	181	140	139	74
D. C.	Washington	127	107	129	353	169	120	109	164	115	104	96	121	185	144	142	63
Florida	Jacksonville	143	130	149	406	193	128	134	189	132	117	97	134	209	167	164	47
	Miami	152	142	161	406	203	133	147	201	140	125	103	141	219	179	178	41

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators, and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS  
(in MBtu/sq. ft./yr) (CONT'D)

State	SMSA															
	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High Rise	Multifamily Low Rise	Nursing Home	Office Large	Office Small	School Elementary	School Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Florida	145	135	152	406	196	129	139	193	135	119	98	136	212	171	168	43
Georgia	122	106	125	353	165	114	108	160	112	100	88	116	180	141	138	53
Idaho	124	100	125	338	163	120	101	158	111	101	98	120	179	139	137	71
Illinois	127	102	129	338	167	124	103	161	113	104	103	123	183	142	141	75
	129	103	130	338	168	125	105	163	114	105	103	124	184	143	143	75
Indiana	128	103	130	338	168	124	105	162	114	105	102	123	184	143	142	73
Kansas	133	109	135	353	175	128	111	162	119	109	105	128	191	150	149	72
Kentucky	128	107	131	353	170	122	109	165	116	105	98	123	186	145	143	66
Louisiana	142	129	147	406	192	123	132	188	131	116	97	133	208	166	163	48
	144	130	149	406	194	130	133	189	133	118	100	135	210	168	165	51
	144	129	149	406	194	130	133	189	132	118	100	135	210	168	164	52
Maine	130	100	131	335	169	129	101	162	114	107	109	127	186	143	143	86
Massachusetts	125	101	126	338	165	121	102	159	111	102	99	121	181	140	139	72
Michigan	129	103	130	338	168	126	104	163	114	106	105	125	185	143	143	77
Minnesota	142	108	144	355	180	140	110	175	123	117	122	138	198	155	157	93
Mississippi	127	113	131	338	171	117	115	167	117	104	90	120	186	147	145	50
Missouri	132	109	134	353	174	126	111	161	118	108	103	127	190	149	148	71
	133	110	136	353	175	127	112	162	119	109	104	128	191	150	149	70

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr) (CONT'D)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High-Rise	Multifamily Low-Rise	Nursing Home	Office, Large	Office, Small	School, Elementary	School, Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Missouri	St. Louis	133	110	136	353	175	128	112	163	119	109	105	128	192	150	149	72
Montana	Great Falls	131	102	132	335	170	129	102	163	115	107	110	127	186	144	144	85
Nebraska	Omaha	130	105	132	338	170	126	106	164	115	107	105	126	186	145	145	76
Nevada	Las Vegas	130	115	135	358	174	118	118	170	119	106	92	122	188	150	148	49
New Jersey	Newark	129	107	131	353	171	123	108	165	116	105	99	124	187	146	144	68
New Mexico	Abuquerque	127	107	129	353	169	121	108	164	115	104	96	122	185	144	142	64
New York	Albany	131	102	132	335	170	129	103	164	115	108	109	127	187	145	145	83
	Binghamton	133	103	135	335	172	132	104	166	117	110	113	130	189	147	147	88
	Buffalo	129	101	130	338	168	127	102	162	114	106	106	125	185	143	142	80
	New York	126	105	128	353	168	120	107	162	114	103	96	121	184	143	141	66
No. Carolina	Raleigh	124	106	127	353	167	117	108	161	113	101	92	119	182	142	139	59
North Dakota	Bismarck	146	110	147	335	184	146	111	179	125	121	129	143	203	158	161	102
Ohio	Akron	128	102	129	338	167	125	103	161	113	105	104	124	183	142	141	77
	Cincinnati	130	107	132	353	172	124	109	166	117	106	101	125	188	147	145	70
	Cleveland	129	103	131	338	169	126	104	163	114	106	105	125	185	144	143	78
	Columbus	128	103	130	338	168	125	104	162	114	105	103	124	184	143	142	75

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators, and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr) (CONT'D)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High Rise	Multifamily Low Rise	Nursing Home	Office, Large	Office, Small	School, Elementary	School, Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Oklahoma	Oklahoma City	129	110	132	353	172	121	112	167	117	106	97	123	187	147	146	61
	Tulsa	127	109	130	353	170	119	111	165	116	104	95	121	185	146	144	59
Oregon	Medford	120	99	121	353	162	116	101	155	109	98	91	116	177	136	135	64
	Portland	119	98	120	353	161	116	99	154	108	97	91	115	176	135	131	66
Pennsylvania	Allentown	129	105	131	353	171	125	106	158	116	106	102	125	187	145	144	74
	Philadelphia	131	107	133	353	173	126	109	160	117	107	102	126	189	147	146	71
So. Carolina	Pittsburgh	126	101	127	338	165	122	103	159	112	103	100	121	181	141	139	72
	Charleston	124	110	128	358	168	114	113	163	114	102	88	118	183	144	141	49
Tennessee	Memphis	126	109	129	353	169	117	111	164	115	103	92	120	184	145	142	56
	Nashville	125	107	128	353	168	117	109	162	114	102	92	119	183	143	141	58
Texas	Amarillo	126	106	129	353	168	120	108	163	114	103	95	121	184	144	141	63
	Brownsville	150	139	157	406	200	132	143	198	138	123	101	139	216	176	174	43
	Dallas	131	116	136	358	175	119	119	171	120	107	94	124	190	152	150	50
	El Paso	126	110	129	358	169	116	113	164	115	103	90	119	184	145	142	52
	Fort Worth	128	113	132	358	171	117	116	167	117	104	90	120	186	148	145	50
	Houston	145	130	150	406	195	130	134	190	133	118	100	136	211	169	166	51
	Lubbock	126	107	128	353	168	118	110	163	114	103	93	120	183	144	141	58

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr) (CONT'D)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High-Rise	Multifamily Low-Rise	Nursing Home	Office, Large	Office, Small	School, Elementary	School, Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Texas	San Antonio	146	131	151	406	196	132	134	191	134	119	102	137	212	170	167	53
Utah	Salt Lake City	129	104	131	338	169	125	105	163	114	106	104	125	185	144	143	76
Vermont	Burlington	134	103	135	335	173	133	104	167	117	110	114	131	190	147	148	89
Virginia	Norfolk	123	105	125	353	165	115	108	160	112	100	90	117	180	141	138	56
	Richmond	129	107	131	353	171	122	109	165	116	105	98	123	186	146	144	66
Washington	Seattle	119	96	119	353	160	116	97	153	107	96	91	115	176	134	130	69
	Spokane	126	99	126	338	165	124	100	158	111	103	103	122	181	139	138	79
West Virginia	Charleston	128	106	130	353	170	123	108	164	115	105	99	123	186	145	143	68
Wisconsin	Madison	131	102	132	335	170	130	103	164	115	108	110	128	187	145	145	84
	Milwaukee	131	102	132	335	170	129	103	164	115	108	110	128	187	145	145	84
Wyoming	Cheyenne	128	100	129	338	167	127	101	161	113	105	106	125	184	142	141	82

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

BILLING CODE 6460-01-C

**Appendix II: Climate Tables**

**1. Purpose of this Appendix.** The purpose of this Appendix is twofold. First, it identifies the SMSA's and cities for which Energy Budget Levels have been established.

Second, this Appendix provides instructions and data for relating the location of the building design to one of the listed SMSA's or cities. Using the climate data identified this way, the Energy Budget Level can be selected and the Design Energy Consumption calculated.

**2. Contents of Table II-1.** Table II-1, which shall be used for all building designs for new buildings, has seven columns: Three identify the location and boundaries of each SMSA or city, and the remaining four are National Oceanic and Atmospheric Administration (NOAA) climatic data for each SMSA or city.

- **Column 1: State.** This is the principal State in which the SMSA or city is located. In some cases, an SMSA crosses State boundaries.

- **Column 2: City.** This is the principal name by which the SMSA or city is identified by the Department of Commerce.

- **Column 3: Counties.** This further identifies the area contained within the SMSA or city. Generally, these are whole counties, parishes or city limits. In some cases, only part of a county is included, in which case the Department of Commerce publication, "SMSA, 1975" shall be consulted for a precise boundary.

- **Column 4: HDD (Base 60° F).** This is the average annual heating degree-days calculated for a base of 60° F.

- **Column 5: CDD (Base 50° F).** This is the average annual cooling degree-days calculated for a base of 50° F.

- **Column 6: Percent Possible Sunshine.** This is the mean probable annual sunshine available, expressed as a percent.

- **Column 7: Mean Dewpoint Temperature.** This is the mean annual dewpoint temperature, expressed in °F.

**3. Instructions.** (a) If the building site is located within the boundaries of one of the SMSA's or cities listed in Table II-1, use that SMSA or city for the Energy Budget Level selection and use the associated climate data for the Design Energy Consumption calculation.

(b) If the building site is not located in one of the SMSA's or cities listed in Table II-1, use the following procedure to select the appropriate climate data that best fits the new building's intended location.

**Step 1:** Obtain from Publications, National Climatic Center, Federal Building, Asheville, NC 28801, the current "NOAA Local Climatological Data (LCD) Annual Summary with Comparative Data" for the LCD station closest to the new building's intended site, as well as the documents, "Degree Days to Selected Bases for First Order Tape Stations," and "Climate Atlas of the United States."

**Step 2:** Obtain the following from the documents listed in Step 1: (a) Total average annual heating degree-days, base 60° F; (b) total annual average cooling degree-days, base 50° F; (c) mean annual percent of possible sunshine, for those locations where available, and (d) mean annual dewpoint temperature, °F.

**Step 3:** Examine the data given in Table II-1 to select one or more SMSA's or cities for which the corresponding data does not vary from the data obtained in Step 2 by more than ±15 percent each for HDD, CDD, and, for locations where available, the mean annual percent possible sunshine.

**Step 4:** If there is only one SMSA or city which meets the criteria in Step 3, use that SMSA or city to select the Energy Budget Level and the climate data for that SMSA or city for the calculation of the Design Energy Consumption. If there is no SMSA or city which meets the criteria in Step 3, use the SMSA or city which is closest, as measured in air miles, and within 5 degrees latitude of the new building's intended site. If there is more than one SMSA or city meeting the criteria, proceed to Step 5.

**Step 5:** If there are two or more SMSA's or cities meeting the criteria in Step 3, select one SMSA or city in which the average annual dewpoint temperature is within ±15 percent of the data obtained in Step 2. If none of the SMSA's or cities which meet the criteria in Step 3 also meet the criteria for average annual dewpoint temperature in this Step, then select that SMSA or city from those meeting the criteria in Step 3 for which the average annual dewpoint temperature is closest to that obtained in Step 2. Use that SMSA or city to select the Energy Budget Level, and use the climate data associated with that SMSA or city to calculate the Design Energy Consumption for the building design.

Table II-1.—SMSA and City Locations  
[NOAA climatic summary]

State	City	Counties	HDD (base 60°F)	CDD (base 50°F)	Percent possible sunshine	Mean dewpoint temperature °F annual
1	2	3	4	5	6	7
Alabama.....	Birmingham.....	Jefferson, St. Clair, Shelby, and Walker.....	1995	5403	59	51
Alabama.....	Mobile.....	Baldwin and Mobile.....	1062	6698	59	60
Arizona.....	Phoenix.....	Maricopa.....	899	7596	85	41
California.....	Bakersfield.....	Kern.....	1367	5835	78	45
California.....	Fresno.....	Fresno.....	1724	4986	78	45
California.....	Los Angeles.....	Los Angeles.....	522	5442	73	50
California.....	Oakland.....	Napa and Solano.....	1570	2963	66	47
California.....	Sacramento.....	Placer, Sacramento, and Yolo.....	1837	4286	77	48
California.....	San Diego.....	San Diego.....	648	4746	68	51
California.....	San Francisco.....	Alameda, Contra Costa, Marin, San Francisco, and San Mateo.....	1668	2832	66	47
Colorado.....	Denver.....	Adams, Arapahoe, Boulder, Douglas, Gilpin, and Jefferson.....	4246	2993	67	20
Connecticut.....	Bridgeport.....	Fairfield and New Haven.....	4264	3064	60	42
Connecticut.....	Hartford.....	*Hartford, *Litchfield, *Middlesex, *New London, and *Tolland.....	5085	2715	56	40
District of Columbia.....	Washington.....	District of Columbia, Charles (MD), Montgomery (MD), Prince Georges (MD), Alexandria City (VA), Fairfax City (VA), Falls Church City (VA), Arlington (VA), Fairfax (VA), Loudoun (VA), and Prince William (VA).....	3182	4237	58	44
Florida.....	Jacksonville.....	Baker, Clay, Duval, Nassau, and St. Johns.....	788	6938	62	58
Florida.....	Miami.....	Dade.....	54	9308	67	68
Florida.....	Tampa.....	Hillsborough, Pasco, and Pinellas.....	364	8172	68	63

Table II-1.—SMSA and City Locations—Continued

[NOAA climatic summary]

State	City	Counties	HDD (base 60°F)	CDD (base 50°F)	Percent possible sunshine	Mean dewpoint temperature °F Annual
1	2	3	4	5	6	7
Georgia	Atlanta	Butts, Cherokee, Clayton, Cobb, De Kalb, Douglas, Fayette, Forsythe, Fulton, Gwinett, Henry, Newton, Paulding, Rockdale, and Walton.	2189	4880	60	50
Idaho	Boise City	Ada	4533	2793	66	33
Illinois	Chicago	Cook, Du Page, Kane, McHenry, Will, and Lake	4952	3272	59	39
Illinois	Glenview	City limits	5245	2963	59	39
Indiana	Indianapolis	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, and Shelby.	4430	3441	59	42
Kansas	Dodge City	City limits	3663	4025	71	39
Kentucky	Louisville	Bullitt, Jefferson, Oldham, Clark (IN), and Floyd (IN)	3584	4005	59	45
Louisiana	Baton Rouge	Ascension Parish, East Baton-Rouge, Livingston, West Baton, and Rouge.	1036	6685	59	60
Louisiana	Lake Charles	Calcasieu Parish	908	5965	59	59
Louisiana	New Orleans	Jefferson, Orleans, St. Bernard, and St. Tammany	893	6956	59	60
Massachusetts	Boston	*Essex, *Middlesex, *Norfolk, *Plymouth, and Suffolk	4383	2920	57	39
Maine	Portland	*Cumberland and *York	6035	1860	58	37
Michigan	Detroit	Lapeer, Livingston, Macomb, Oakland, St. Clair, and Wayne.	5167	2823	53	39
Minnesota	Minneapolis	Anoka, Carver, Chicago, Dakota, Hennepin, Ramsey, Scott, Washington, Wright, and St. Croix (MN).	6842	2575	56	34
Mississippi	Jackson	Hinds and Rankin	1548	6086	59	54
Missouri	Columbia	Boone	3997	3919	61	43
Missouri	Kansas	Cass, Clay, Jackson, Platte, Ray, Johnson (KS), and Wyandotte (KS).	4069	4085	65	43
Missouri	St. Louis	Franklin, Jefferson, St. Charles, St. Louis, Clinton (IL), Madison (IL), Monroe (IL), and St. Clair (IL).	3701	4232	61	44
Montana	Great Falls	Cascade	6248	2132	64	28
Nebraska	Omaha	Douglas, Sarpy, and Pottawattamie, (IA)	4907	3637	62	40
Nevada	Las Vegas	Clark	1770	6443	82	28
New Jersey	Newark	Essex, Morris, Somerset, and Union	3911	3533	59	42
New Mexico	Albuquerque	Bernalillo and Sandoval	3234	4053	76	30
New York	Albany	Albany, Montgomery, Rensselaer, Saratoga, and Schenectady.	5596	2619	63	38
New York	Binghamton	Broome, Tioga, and Susquehanna (PA)	5908	2231	44	37
New York	Buffalo	Erie and Niagara	6591	2388	53	39
New York	New York	Broox, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester, and Bergen (NJ).	3739	3653	59	42
North Carolina	Raleigh	Durham, Orange, and Wake	2542	4482	61	48
North Dakota	Bismarck	City limits	7656	2248	59	30
Ohio	Akron	Portage and Summit	4971	2820	50	41
Ohio	Cincinnati	Clermont, Hamilton, Warren, Boone (KY), Campbell (KY), Kenon (KY), and Dearborn (IN).	3763	3864	57	43
Ohio	Cleveland	Cuyahoga, Geauga, Lake, and Medina	4901	2807	50	41
Ohio	Columbus	Delaware, Fairfield, Franklin, Madison, and Pickaway	4513	3183	55	42
Oklahoma	Oklahoma City	Canadian, Cleveland, McCain, Oklahoma, and Pottawatomie.	2760	4960	68	47
Oklahoma	Tulsa	Creek, Mayes, Osage, Rogers, Tulsa, and Wagoner	2750	5052	62	47
Oregon	Medford	City limits	3614	2685	58	40
Oregon	Portland	Clackamas, Multnomah, Washington, and Clark (WA)	3365	2309	48	44
Pennsylvania	Allentown	Carbon, Lehigh, Northampton, and Warren (NJ)	4618	3053	57	43
Pennsylvania	Philadelphia	Bucks, Chester, Delaware, Montgomery, Philadelphia, Burlington (NJ), Camden (NJ), and Gloucester (NJ).	3753	3679	57	43
Pennsylvania	Pittsburgh	Allegheny, Beaver, Washington, and Westmoreland	4694	2914	51	40
South Carolina	Charleston	Berkeley, Charleston, and Dorchester	1230	6334	66	55
Tennessee	Memphis	Shelby, Tipton, Crittenden (AR), and DeSota (MS)	2352	5339	64	50
Tennessee	Nashville	Cheatham, Davidson, Dickson, Robertson, Sumner, Williamson, and Wilson.	2758	4812	59	49
Texas	Amarillo	Potter and Randall	3156	4274	78	38
Texas	Brownsville	Cameron	336	8753	61	65
Texas	Dallas	Collin, Dallas, Denton, Ellis, Kaufman, Parker, and Rockwall.	1554	6467	68	52
Texas	Fort Worth	Hood, Johnson, Tarrant, and Wise	1816	6229	68	51
Texas	El Paso	El Paso	1833	5548	80	35
Texas	Houston	Brazoria, Fort Bend, Harris, Liberty, Montgomery, and Walker.	6664	7150	56	60
Texas	Lubbock	Lubbock	2603	4745	75	41
Texas	San Antonio	Bexar, Comal, and Guadalupe	858	7146	62	55
Utah	Salt Lake City	Davis, Salt Lake, Tooele, and Weber	4733	3094	69	32
Vermont	Burlington	City limit	6488	2180	46	36
Virginia	Norfolk	Chesapeake, Norfolk, Portsmouth, Suffolk, Virginia Beach, and Currituck (NC).	2516	4530	62	49
Virginia	Richmond	Charles City, Chesterfield, Goochland, Hanover, Henrico, and Powhatan.	2916	4276	61	47
Washington	Seattle	King and Snohomish	3657	1832	45	43
Washington	Spokane	Spokane	5420	2120	58	34
West Virginia	Charleston	Kanawha and Putnam	3500	3750	48	44
Wisconsin	Madison	Dane	6373	2361	56	37
Wisconsin	Milwaukee	Milwaukee, Ozaukee, Washington, and Waukesha	6060	2342	57	38
Wyoming	Cheyenne	City limits	5825	2003	66	27

\*Part of a county.

Appendix III.—Approved Alternate Evaluation Techniques [Reserved]

Appendix IV.—Model Codes and Standards [Reserved]



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Wednesday  
November 28, 1979

REGISTRATION

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Part III

**Nuclear Regulatory  
Commission**

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Physical Protection Upgrade Rule

**NUCLEAR REGULATORY COMMISSION****10 CFR Parts 70, 73, and 150****Physical Protection Upgrade Rule****AGENCY:** U.S. Nuclear Regulatory Commission.**ACTION:** Final rule.

**SUMMARY:** In July 1977, the Commission published for public comment proposed amendments to its regulations for strengthened physical protection for strategic special nuclear material, certain fuel cycle facilities, transportation and other activities involving significant quantities of strategic special nuclear material. Extensive comments were received and a revision of the proposed amendments was published in August 1978 requesting public comment on the changes made.

In response to public comments, some additional changes have been made to the proposed amendments. The Nuclear Regulatory Commission now is publishing these revised amendments in final form.

The NRC has issued for public comment guidance documentation to assist the licensee in the development of safeguards physical protection and transportation protection plans and the implementation of such plans required by the amendments. The effective date of the revised requirements has been set to permit public comment on the guidance and its issuance in final form at the time the requirements become effective.

**EFFECTIVE DATE:** March 25, 1980.

**Note.**— The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for review of its reporting requirement under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of the rule becomes effective, unless advised to the contrary, includes a 45-day period which that statute allows for Comptroller General review (44 U.S.C. 3512(c)(2)).

**FOR FURTHER INFORMATION CONTACT:** Mr. L. J. Evans, Jr., Chief, Regulatory Improvements Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-427-4181, or Dr. W. B. Brown, Acting Chief, Safeguards Standards Branch, Division of Siting, Health And Safeguards Standards, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-443-5907.

**SUPPLEMENTARY INFORMATION:** On July 5, 1977, the Nuclear Regulatory

Commission published in the Federal Register (42 FR 34310) proposed amendments to 10 CFR Part 73 of its regulations. Interested persons were invited to submit written comments and suggestions in connection with the proposed amendments within 45 days after publication in the Federal Register. The comment period was subsequently extended thirty days. Upon consideration of the comments received on the proposed amendments published on July 5, 1977 and upon consideration of other factors involved, the Nuclear Regulatory Commission published revised proposed amendments on August 9, 1978 in the Federal Register (43 FR 35321) to obtain further public comment on the changes that had been made to the proposed amendments.

Significant differences from the original proposed amendments published for comment on July 5, 1977 were: (1) The definition of the conspiracy threat was changed to a conspiracy between individuals in any position who may have access to and detailed knowledge of the facilities and activities referred to in § 73.20(a) or items that could facilitate theft of special nuclear material or both; (2) export/import requirements were revised to reflect the jurisdictional aspects of the regulation; (3) the phrase " \* \* \* but not necessarily limited to \* \* \* " was deleted from the general performance requirements and capability requirements; (4) the package search requirements were changed so that packages carried into a protected area by persons having access authorization need only be searched when that person is chosen for random search. The package search requirement also was changed to require only random search of packages delivered into a protected area; (5) the Contingency and Response plan requirements for in-transit protection were revised to add more detailed response requirements consistent with the fixed site requirements; (6) the requirement for three armed escorts on cargo aircraft and for sea shipments was changed to two; (7) the requirement for Pu and U-233 containers resistant to small arms fire was deleted; (8) the export/import security plan approval requirement was changed to apply to all shipments and was clarified as to timing; (9) the requirement for alarm stations to be considered vital areas was changed; (10) the use of vault type rooms for storage of strategic special nuclear material directly useable in a nuclear explosive device was prohibited and the definition of vault changed to better reflect the purpose of vaults; (11)

the word "immediately" was deleted from the requirement that armed response personnel be immediately available; (12) definitions were added for deceit, stealth, and force, and other changes in wording and language were made throughout the rule to clarify the intent and be more specific in the meaning of the requirements; (13) obsolete sections to be deleted when the effective rule is published were noted; and (14) planning and implementation times were changed.

After review of the latest round of comments, the following substantive changes have been made: (1) Non-power reactors are not required to meet the provisions of the upgrade rule. As an interim measure, non-power reactors must meet the provisions of § 73.67 (a), (b), (c), (d), (requirements for protection of material of low and moderate strategic significance), and in some cases of the provisions of a revised § 73.60 (for those non-power reactor facilities possessing formula quantities of special nuclear material not meeting the 100 rem self-protection exemption); (2) the definition of vault has been further revised and required vault attributes have been added to § 73.46(c)(5)(i); (3) the number of armed escorts required for transfer, rail and road transportation of domestic shipments of SSNM has been reduced from nine to seven individuals; (4) the requirement for "penetration resistant" tamper-indicating containers for storage of certain SSNM has been changed to tamper-indicating containers; (5) the requirement for a third closed circuit television monitor of vaults has been changed; (6) a definition has been added for "undergoing processing;" (7) planning and implementation times have been changed; (8) the design basis threat relating to theft of strategic special nuclear material has been modified and moved to § 73.1(a); (9) the design basis threat statement relating to radiological sabotage (present § 73.55) has been modified and moved to § 73.1(a); and (10) the "high assurance phrase" contained in § 73.20(a) of the proposed rule and in present § 73.55(a) has been modified to state that the physical protection system will have as its objective to provide high assurance. In addition, changes in wording and language have been made throughout the rule for clarification, and conforming changes in references to and by existing sections have been made.

The following discussion pertains to items (1) through (9) above.

(1) Application of the requirements of these amendments to non-power reactors possessing formula quantities

of special nuclear material which cannot meet the 100 rem self-protection exemption has been deferred pending completion of a separate on-going review of total safeguards requirements adequacy at such facilities. In the interim, such licensees will be subject to the provisions of § 73.67 (a), (b), (c), and (d), and revised § 73.60. This is an interim solution only, and it is the intent of the Commission to bring non-power reactors under an improved safeguards system in the near future.

(2) Commenters noted that the definition of vault, while attempting to specify a delay capability tied to the response time of LLEA, failed to account for the significance of other aspects of the security system, such as intrusion detection and communication, in determining that response time. Additionally, the use of LLEA response time as the criterion for measuring vault delay time was criticized as being impractical and ignoring the protection afforded by response of the armed onsite security force. Accordingly, the definition has been changed and an additional discussion of required vault attributes has been added to § 73.46.

(3) In determining a specific number of armed escorts for domestic transfers, rail, and road shipments, the basic principles were that force size be large enough to engage a small group of attackers and delay theft and that this force would always be composed of two distinct separated groups, so that no single act which interrupted communications of one group would totally destroy the ability to communicate to the movement control center. The Commission, in reviewing the differences in performance that could be expected from different group sizes, determined that seven armed individuals could provide the necessary protection while lessening labor expense. The rule has been changed accordingly.

(4) Comments questioned whether a "penetration resistant" tamper-indicating container was adequately defined, available, or even necessary. As the meaning of penetration resistant was not clear, availability of containers was not certain, and the need for such containers was not defined, the rule was changed to delete the terms "penetration resistant."

(5) Commenters stated that requiring a third continuously manned location to monitor closed circuit television was equivalent to requiring a third alarm station. The intent of this provision was to add a third factor to protect against collusion between the two alarm station operators. After review, the Commission has determined that this factor could be

provided without the specific requirements of a third CCTV monitor. The rule has been changed accordingly.

(6) Commenters expressed confusion as to when protection requirements were required while SSNM is undergoing processing. A definition has been added to § 73.2 to define undergoing processing and to clarify the distinction between such processing and storage for application of protection requirements.

(7) The implementation schedule has been simplified. There is now one schedule required for planning and implementing a revised security program, rather than separate schedules for the external threat plan and internal conspiracy plan as previously proposed. The prior two schedule approach was to permit time for development of guidance for protection against the internal conspiracy. This guidance has now been developed so that a schedule delay is not necessary.

(8) Based upon review of the design basis threat, the previous threat description stated as a general performance requirement in § 73.20(a) has been modified to reflect a reference to the malevolent act of concern (theft or diversion) rather than a reference to the type of facility to be protected and has been moved to § 73.1. Appropriate reference changes have been made accordingly.

(9) The existing design basis threat stated in § 73.55(a) for nuclear power reactors has also been modified as in (7) above to be referenced to the radiological sabotage threat rather than to the facility to be protected and has been moved to § 73.1. Appropriate reference changes have been made accordingly.

(10) The Commission has modified the statement of general performance requirements. Paragraph 73.20(a) of the proposed rule required the physical protection system to prevent theft of strategic special nuclear material and to protect against radiological sabotage with high assurance. This paragraph has been modified to state that the physical protection system will have as its objective to provide high assurance that covered activities are not inimical to the common defense and security and do not constitute an unreasonable risk to public health and safety.

The Commission is also making a conforming modification to 10 CFR, 73.55(a) to state an objective of high assurance in the performance of security systems to protect against radiological sabotage at nuclear power reactors identical to the general performance objective in 10 CFR 73.20(a). This is a change from the present 10 CFR 73.55(a)

which currently calls for high assurance in performance as a requirement of physical security systems. It is important to note that this change will not affect the Commission's judgments of what system requirements are necessary to assure provision of adequate safeguards against radiological sabotage, theft or diversion. "High assurance," as used in 10 CFR 73.55(a), is deemed to be comparable to the degree of assurance contemplated by the Commission in its safety review for protection against severe postulated accidents having potential consequences similar to the potential consequences from reactor sabotage. It should be appreciated that the standard "reasonable assurance," commonly used in safety evaluations, is applied to a broad category of safety concerns ranging from the mitigation of minor anticipated operational occurrences to protection against severe postulated accidents. Thus, the degree of assurance necessary to provide "reasonable assurance" varies with the gravity of the safety concern.

In adopting these amendments, the Commission decided that the requirements should not be made effective until guidance had been published assisting licensees in conforming to performance-oriented physical protection requirements for affected facilities and activities. Allowance for consideration of public comments on this guidance has been built into the time period specifying the effective date of the amendments. Prior to the publication of these amendments, two guidance documents have been published for public comment. These are: (1) "Fixed Site Physical Protection Upgrade Rule Guidance Compendium, Volumes I and II" and (2) Regulatory Guide 5. (SG904-4), "Standard Format and Content, Physical Protection of Strategic Special Nuclear Material In Transit."

In addition, revisions to Regulatory Guides 5.7, "Exit/Entry Control to Protected Areas, Vital Areas, and Material Access Areas," 5.14, "The Use of Observation (Visual Surveillance) Techniques in Material Access Areas," 5.44, "Perimeter Alarm Systems," and 5.57, "Shipping and Receiving Control of Special Nuclear Material," have been made. These documents also have been published for comment.

Copies of these new and revised guidance documents have been sent to persons who have expressed an interest in this matter. Comments have been received so that final guidance can be published by the time the rule becomes effective on March 25, 1980. Copies of

these documents also will be placed in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

The Commission believes that a significant number of comments for which no changes to the amendments were made will be satisfactorily addressed by this guidance documentation to be published concurrently with the effective date of these amendments.

In addition to the comments that resulted in changes in the proposed amendments, the threat and general performance requirements were again questioned. The Commission believes it is worth restating the purpose and intent of the threat characterization and its relationship to the general performance requirements.

The purpose of the threat defined in the proposed amendments is to define the general character of the domestic safeguards challenge. It is intended to provide a design basis for physical protection systems; therefore, additional adversary attributes are not necessary to serve this purpose. Physical protection systems, when designed to the level specified in the general performance sections of the rule and in accordance with the reference system specified in the rule and other design guidance to be provided, will be responsive to a general range of threats characterized by that stated in the amendments.

With respect to specific numbers of adversaries, the numbers are not as significant as are the capabilities and resources of the adversary. For example, the threat from a disorganized mob of fifty or so people is much different from that of only a few well-organized, well-trained people.

Given that the described threat is a design basis for a physical protection system, additional design criteria are given in the form of required system capabilities. These capabilities are further supported by a reference safeguards system (§ 73.46) which provides guidance concerning those safeguards measures which will generally be included in a physical protection system that achieves the required performance capabilities.

The Commission has determined under Council of Environmental Quality guidelines and the criteria in 10 CFR Part 51 that an environmental impact statement for the amendments to 10 CFR Part 73 is not required. Concurrently with publication of the notice of proposed rulemaking of July 5, 1977 (42 FR 34310), the Commission made available in its Public Document Room at 1717 H Street NW., Washington, D.C.,

an "Environmental Impact Appraisal of Amendments to 10 CFR Part 73" to support a Negative Declaration. This document is appropriate for the revised amendments as well.

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, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts 70, 73, and 150, are published as a document subject to codification.

## PART 70—DOMESTIC LICENSE OF SPECIAL NUCLEAR MATERIAL

### § 70.20a [Amended]

1. Section 70.20a(a) is amended to replace references ". . . §§ 73.30 through 73.36 . . ." with reference to §§ 73.20, 73.25, 73.26, and 73.27.

2. Section 70.20a(d) is amended to replace references ". . . §§ 73.30 through 73.36 . . ." with reference to §§ 73.20, 73.25, 73.26, and 73.27.

### § 70.22 [Amended]

3. Section 70.22(g) is amended to replace references ". . . §§ 73.30 through 73.36, 73.47 (a) and (e), 73.47(g) . . ." with reference to §§ 73.20, 73.25, 73.26, 73.27, 73.67 (a) and (e), 73.67(g).

4. Section 70.22(h) is amended to add references to §§ 73.20, 73.45, and 73.46.

5. Section 70.22(k) is amended to change the reference to § 73.47 (d), (e), (f) and (g) to reference § 73.67 (d), (e), (f) and (g).

### § 70.32 [Amended]

6. Section 70.32(d) is amended to replace the reference to paragraph 73.30(e) with reference to § 73.20(c).

7. Section 70.32(e) is amended to replace the reference to paragraph (f) with reference to § 73.20(c).

8. Section 70.32(f) is deleted.

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

9. The table of contents for Part 73 is revised to read as follows:

### General Provisions

- Sec.
- 73.1 Purpose and scope.
  - 73.2 Definitions.
  - 73.3 Interpretations.
  - 73.4 Communications.
  - 73.5 Specific exemptions.
  - 73.6 Exemptions for certain quantities and kinds of special nuclear material.
  - 73.20 General performance requirements.
  - 73.24 Prohibitions.

## Physical Protection of Special Nuclear Material in Transit

### Sec.

- 73.25 Performance capabilities for physical protection of strategic special nuclear material in transit.
- 73.26 Transportation physical protection systems, subsystems, components, and procedures.
- 73.27 Notification requirements.
- 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

## Physical Protection Requirements at Fixed Sites

- 73.40 Physical protection: General requirements at fixed sites.
- 73.45 Performance capabilities for fixed site physical protection.
- 73.46 Fixed site physical protection systems, subsystems, components and procedures.
- 73.50 Requirements for physical protection of licensed activities.
- 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.
- 73.60 Additional requirements for the physical protection of special nuclear material at non-power reactors.

## Physical Protection of Special Nuclear Material of Moderate and Low Strategic Significance

- 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

## Records and Reports

- 73.70 Records.
- 73.71 Reports of unaccounted for shipments, suspected theft, unlawful diversion, or radiological sabotage.
- 73.72 Requirement for advance notice of shipment of special nuclear material.

## Enforcement

- 73.80 Violations.

## Appendices

- Appendix A—United States Nuclear Regulatory Commission Inspection and Enforcement Regional Offices
- Appendix B—General Criteria for Security Personnel
- Appendix C—Licensee Safeguards Contingency Plans
- Appendix D—Physical Protection of Irradiated Reactor Fuel in Transit, Training Program Subject Schedule

Authority: Secs. 53, 161b, 161i, 161o, Pub. L. 83-703, 68 Stat. 930, 948-50, as amended Pub. L. 85-507, 72 Stat. 327, Pub. L. 93-377, 80 Stat. 475 (42 U.S.C. 2073, 2201); sec. 201, Pub. L. 83-438, 88 Stat. 1242, 1243, as amended Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841).

10. Section 73.1(a) of 10 CFR Part 73 is revised to read as follows:

### § 73.1 Purpose and scope.

(a) *Purpose.* This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and

of plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft of special nuclear material:

(1) *Radiological Sabotage.* (i) A determined violent external assault, attack by stealth, or deceptive actions, of several persons with the following attributes, assistance and equipment: (A) Well-trained (including military training and skills) and dedicated individuals, (B) inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both, (C) suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy, (D) hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system, and

(ii) An internal threat of an insider, including an employee (in any position).

(2) *Theft or Diversion of Formula Quantities of Strategic Special Nuclear Material.* (i) A determined external assault, attack by stealth, or deceptive actions, by a small group with the following attributes, assistance and equipment: (A) Well-trained (including military training and skills) and dedicated individuals, (B) inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both, (C) suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy, (D) hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter or container integrity or features of the safeguards system, and (E) the ability to operate as two or more teams,

(ii) An individual, including an employee (in any position), and

(iii) A conspiracy between individuals in any position who may have: (A) Access to and detailed knowledge of nuclear power plants or the facilities referred to in § 73.20(a), or (B) items that could facilitate theft of special nuclear

material (e.g., small tools, substitute material, false documents, etc.), or both.

11. Sections 73.2 (c), (f), (h), (k), (n), and (p) of 10 CFR Part 73 are revised to read as follows:

§ 73.2 Definitions.

As used in this part:

(c) "Guard" means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft, the protection of a plant against radiological sabotage, or both.

(f) "Physical barrier" means

(1) Fences constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled outward between 30° and 45° from the vertical, with an overall height of not less than eight feet, including the barbed topping;

(2) Building walls, ceilings and floors constructed of stone, brick, cinder block, concrete, steel or comparable materials (openings in which are secured by grates, doors, or covers of construction and fastening of sufficient strength such that the integrity of the wall is not lessened by any opening), or walls of similar construction, not part of a building, provided with a barbed topping described in paragraph (f)(1) of this section of a height of not less than 8 feet; or

(3) Any other physical obstruction constructed in a manner and of materials suitable for the purpose for which the obstruction is intended.

(h) "Vital area" means any area which contains vital equipment.

(k) "Isolation zone" means any area adjacent to a physical barrier, clear of all objects which could conceal or shield an individual.

(n) "Vault" means a windowless enclosure with walls, floor, roof and door(s) designed and constructed to delay penetration from forced entry.

(p) "Radiological sabotage" means any deliberate act directed against a plant or transport in which an activity licensed pursuant to the regulations in this chapter is conducted, or against a component of such a plant or transport which could directly or indirectly endanger the public health and safety by exposure to radiation.

(q) "DOE" means the Department of Energy or its duly authorized representatives.

12. Section 73.2 of 10 CFR Part 73 is amended to add paragraphs (cc) thru (ii).

§ 73.2 Definitions.

As used in this part:

(cc) "Transport" means any land, sea, or air conveyance or modules for these conveyances such as rail cars or standardized cargo containers.

(dd) "Incendiary device" means any self-contained device intended to create an intense fire that can damage normally flame-resistant or retardant materials.

(ee) "Movement control center" means an operations center which is remote from transport activity and which maintains periodic position information on the movement of strategic special nuclear material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(ff) "Force" means violent methods used by an adversary to attempt to steal strategic special nuclear material or to sabotage a nuclear facility or violent methods used by response personnel to protect against such adversary actions.

(gg) "Stealth" means methods used to attempt to gain unauthorized access, introduce unauthorized materials, or remove strategic special nuclear material, where the fact of such attempt is concealed or an attempt is made to conceal it.

(hh) "Deceit" means methods used to attempt to gain unauthorized access, introduce unauthorized materials, or remove strategic special nuclear materials, where the attempt involves falsification to present the appearance of authorized access.

(ii) "Undergoing processing" means performing active operations on material such as chemical transformation, physical transformation, or transit between such operations, to be differentiated from storage or packaging for shipment.

13. The undesignated first paragraph of § 73.6 is revised to read as follows:

§ 73.6 Exemptions of certain quantities and kinds of special nuclear material.

A licensee is exempt from the requirements of §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.70 and 73.72 with

respect to the following special nuclear material:

14. Section 73.6 is amended to add paragraphs (d) and (e) and an unnumbered final paragraph to read as follows:

**§ 73.6 Exemptions of certain quantities and kinds of special nuclear material.**

(d) Special nuclear material that is being transported by the United States Department of Energy transport system.

(e) Special nuclear material at non-power reactors.

Licensees subject to § 73.60 are not exempted from §§ 73.70 and 73.72, and licensees subject to § 73.67(e) are not exempted from § 73.72 of this part.

**§§ 73.30-73.36 [Deleted]**

15. Sections 73.30 through 73.36 are deleted.

**§ 73.37 [Amended]**

16. Section 73.37(a) is amended to replace references ". . . §§ 73.30 through 73.36. . . ." with reference to §§ 73.20, 73.25, 73.26, and 73.27.

**§ 73.40 [Amended]**

17. Section 73.40(a) is revised to read as follows:

**§ 73.40 Physical protection: General requirements at fixed sites.**

(a) Each licensee shall provide physical protection against radiological sabotage and against theft of special nuclear material at the fixed sites where licensed activities are conducted. Physical security systems shall be established and maintained by the licensee in accordance with security plans approved by the Nuclear Regulatory Commission.

**§ 73.40 [Amended]**

18. The first sentence of § 73.40(b) is revised to read as follows:

(b) Each licensee subject to the requirements of §§ 73.20, 73.45, 73.46, 73.50, 73.55, or § 73.60 shall prepare a safeguards contingency plan in accordance with the criteria set forth in Appendix C to this part.

19. New §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.45 and 73.46 are added to read as follows:

**§ 73.20 General performance objective and requirements.**

(a) In addition to any other requirements of this part, each licensee who is authorized to operate a fuel reprocessing plant pursuant to Part 50 of this chapter; possesses or uses formula

quantities of strategic special nuclear material at any site or contiguous sites subject to control by the licensee; is authorized to transport or deliver to a carrier for transportation pursuant to Part 70 of this chapter formula quantities of strategic special nuclear material; takes delivery of formula quantities of strategic special nuclear material free on board (f.o.b.) the point at which it is delivered to a carrier for transportation; or imports or exports formula quantities of strategic special nuclear material, shall establish and maintain or make arrangements for a physical protection system which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threats of theft or diversion of strategic special nuclear material and radiological sabotage as stated in § 73.1(a).

(b) To achieve the general performance objective of paragraph (a) of this section a licensee shall establish and maintain, or arrange for, a physical protection system that:

(1) Provides the performance capabilities described in § 73.25 for in-transit protection or in § 73.45 for fixed site protection unless otherwise authorized by the Commission;

(2) Is designed with sufficient redundancy and diversity to assure maintenance of the capabilities described in §§ 73.25, 73.45; and

(3) Includes a testing and maintenance program to assure control over all activities and devices affecting the effectiveness, reliability, and availability of the physical protection system, including a demonstration that any defects of such activities and devices will be promptly detected and corrected for the total period of time they are required as a part of the physical protection system.

(c) Each licensee subject to the requirements of paragraphs (a) and (b) of this section shall:

(1) Within 150 days after the effective date of these amendments, submit a revised fixed site safeguards physical protection plan and, if appropriate, a revised safeguards transportation protection plan describing how the licensee will comply with the requirements of paragraph (a) of this section; and

(2) Within 360 days after the effective date of these amendments or 90 days after the plan submitted pursuant to paragraph (c)(1) of this section is approved, whichever is later, implement

the approved plan except for activities specifically identified by the licensee which involve new construction, significant physical modification of existing structures or major equipment installation, for which 540 days after the effective date of these amendments or 180 days after the plan(s) is approved, whichever is later, will be allowed.

**§ 73.24 Prohibitions.**

(a) Except as specifically approved by the Nuclear Regulatory Commission, no shipment of special nuclear material shall be made in passenger aircraft in excess of (1) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(b) Unless otherwise approved by the Nuclear Regulatory Commission, no licensee may make shipments of special nuclear material in which individual shipments are less than a formula quantity, but the total quantity in shipments in transit at the same time could equal or exceed a formula quantity, unless either of the following conditions are met:

(1) The licensee shall confirm and log the arrival at the final destination of each individual shipment, and schedule shipments to assure that the total quantity for two or more shipments in transit at the same time does not equal or exceed the formula quantity, or

(2) Physical protection in accordance with the requirements of §§ 73.20, 73.25, and 73.26 is provided by the licensee for such shipments as appropriate so that the total quantity of special nuclear material in the remaining shipments not so protected, and in transit at the same time, does not equal or exceed a formula quantity.

**§ 73.25 Performance capabilities for physical protection of strategic special nuclear material in transit.**

(a) To meet the general performance objective and requirements of § 73.20 an in-transit physical protection system shall include the performance capabilities described in paragraphs (b) through (d) of this section unless otherwise authorized by the Commission.

(b) Restrict access to and activity in the vicinity of transports and strategic special nuclear material. To achieve this capability the physical protection system shall:

(1) Minimize the vulnerability of the strategic special nuclear material by using the following subfunctions and procedures:

(i) Preplanning itineraries for the movement of strategic special nuclear material;

(ii) Periodically updating knowledge of route conditions for the movement of strategic special nuclear material;

(iii) Maintaining knowledge of the status and position of the strategic special nuclear material en route; and

(iv) Determining and communicating alternative itineraries en route as conditions warrant.

(2) Detect and delay any unauthorized attempt to gain access or introduce unauthorized materials by stealth or force into the vicinity of transports and strategic special nuclear material using the following subsystems and subfunctions:

(i) Controlled access areas to isolate strategic special nuclear material and transports to assure that unauthorized persons shall not have direct access to, and unauthorized materials shall not be introduced into the vicinity of, the transports and strategic special nuclear material, and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized penetration (or such attempts) of a controlled access area by persons, vehicles or materials so that the response will satisfy the general performance objective and requirements of § 73.20(a).

(3) Detect attempts to gain unauthorized access or introduce unauthorized materials into the vicinity of transports by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and access criteria for persons, materials and vehicles; and

(ii) Access controls and procedures to verify the identity of persons, materials and vehicles, to assess such identity against current authorization schedules and access criteria before permitting access, and to initiate response measures to deny unauthorized entries.

(c) Prevent or delay unauthorized entry or introduction of unauthorized materials into, and unauthorized removal of, strategic special nuclear material from transports. To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized entry or introduce unauthorized materials into transports by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and entry

criteria for access into transports for both persons and materials; and

(ii) Entry controls and procedures to verify the identity of persons and materials and to permit transport entry only to those persons and materials specified by the current authorization schedules and entry criteria.

(2) Detect attempts to gain unauthorized entry or introduce unauthorized material into transports by stealth or force using the following subsystems and subfunctions:

(i) Transport features to delay access to strategic special nuclear material sufficient to permit the detection and response systems to function so as to satisfy the general performance objective and requirements of § 73.20(a);

(ii) Inspection and detection subsystems and procedures to detect unauthorized tampering with transports and cargo containers; and

(iii) Surveillance subsystems and procedures to detect, assess and communicate any unauthorized presence of persons or materials and any unauthorized attempt to penetrate the transport so that the response will satisfy the general performance objective and requirements of § 73.20(a).

(3) Prevent unauthorized removal of strategic special nuclear material from transports by deceit using the following subsystems and subfunctions:

(i) Authorization controls and procedures to provide current schedules for authorized removal of strategic special nuclear material which specify the persons authorized to remove and receive the material, the authorized times for such removal and receipt and authorized places for such removal and receipt.

(ii) Removal controls and procedures to establish activities for transferring cargo in emergency situations; and

(iii) Removal controls and procedures to permit removal of strategic special nuclear material only after verification of the identity of persons removing or receiving the strategic special nuclear material, and after verification of the identity and integrity of the strategic special nuclear material being removed from transports.

(4) Detect attempts to remove strategic special nuclear material from transports by stealth or force using the following subsystems and subfunctions:

(i) Transport features to delay unauthorized strategic special nuclear material removal attempts sufficient to assist detection and permit a response to satisfy the general performance objective and requirements of § 73.20(a); and

(ii) Detection subsystems and procedures to detect, assess and

communicate any attempts at unauthorized removal of strategic special nuclear material so that response to the attempt can be such as to satisfy the general performance objective and requirements of § 73.20(a).

(d) Respond to safeguards contingencies and emergencies to assure that the two capabilities in paragraphs (b) and (c) of this section are achieved, and to engage and impede adversary forces until local law enforcement forces arrive. To achieve this capability, the physical protection system shall:

(1) Respond rapidly and effectively to safeguards contingencies and emergencies using the following subsystems and subfunctions:

(i) A security organization composed of trained and qualified personnel, including armed escorts, one of whom is designated as escort commander, with procedures for command and control, to execute response functions.

(ii) Assessment procedures to assess the nature and extent of security related incidents.

(iii) A predetermined plan to respond to safeguards contingency events.

(iv) Equipment and procedures to enable responses to security related incidents sufficiently rapid and effective to achieve the predetermined objective of each action.

(v) Equipment, vehicle design features, and procedures to protect security organization personnel, including those at the movement control center, in their performance of assessment and response related functions.

(2) Transmit detection, assessment and other response related information using the following subsystems and subfunctions:

(i) Communications equipment and procedures to rapidly and accurately transmit security information among armed escorts.

(ii) Equipment and procedures for two-way communications between the escort commander and the movement control center to rapidly and accurately transmit assessment information and requests for assistance by local law enforcement forces, and to coordinate such assistance.

(iii) Communications equipment and procedures for the armed escorts and the movement control center personnel to notify local law enforcement forces of the need for assistance.

(3) Establish liaisons with local law enforcement authorities to arrange for assistance en route.

(4) Assure that a single adversary action cannot destroy the capability of armed escorts to notify the local law enforcement forces of the need for assistance.

**§ 73.26 Transportation physical protection systems, subsystems, components, and procedures.**

(a) A transportation physical protection system established pursuant to the general performance objectives and requirements of § 73.20 and performance capability requirements of § 73.25 shall include, but are not necessarily limited to, the measures specified in paragraphs (b) through (l) of this section. The Commission may require, depending on the individual transportation conditions or circumstances, alternate or additional measures deemed necessary to meet the general performance objectives and requirements of § 73.20. The Commission also may authorize protection measures other than those required by this section if, in its opinion, the overall level of performance meets the general performance objectives and requirements of § 73.20 and the performance capability requirements of § 73.25.

**(b) Planning and Scheduling.**

(1) Shipments shall be scheduled to avoid regular patterns and preplanned to avoid areas of natural disaster or civil disorders, such as strikes or riots. Such shipments shall be planned in order to avoid storage times in excess of 24 hours and to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept the shipment.

(2) Arrangements shall be made with law enforcement authorities along the route of shipments for their response to an emergency or a call for assistance.

(3) Security arrangements for each shipment shall be approved by the Nuclear Regulatory Commission prior to the time for the seven-day notice required by § 73.72. Information to be supplied to the Commission in addition to the general security plan information is as follows:

- (i) Shipper, consignee, carriers, transfer points, modes of shipment,
- (ii) Point where escorts will relinquish responsibility or will accept responsibility for the shipment,
- (iii) Arrangements made for transfer of shipment security, and
- (iv) Security arrangements at point where escorts accept responsibility for an import shipment.

(4) Hand-to-hand receipts shall be completed at origin and destination and at all points enroute where there is a transfer of custody.

**(c) Export/Import Shipments.**

(1) A licensee who imports a formula quantity of strategic special nuclear material shall make arrangements to assure that the material will be protected in transit as follows:

(i) An individual designated by the licensee or his agent, or as specified by a contract of carriage, shall confirm the container count and examine locks and/or seals for evidence of tampering, at the first place in the United States at which the shipment is discharged from the arriving carrier.

(ii) The shipment shall be protected at all times within the geographical limits of the United States as provided in this section and §§ 73.25 and 73.27.

(2) A licensee who exports a formula quantity of strategic special nuclear material shall comply with the requirements of this section and §§ 73.25 and 73.27, as applicable, up to the first point where the shipment is taken off the transport outside the United States.

**(d) Security Organization.**

(1) The licensee or his agent shall establish a transportation security organization, including armed escorts, armed response personnel or guards, and a movement control center manned and equipped to monitor and control shipments, to communicate with local law enforcement authorities, and to respond to safeguards contingencies.

(2) At least one full time member of the security organization who has the authority to direct the physical protection activities of the security organization shall be on duty at the movement control center during the course of any shipment.

(3) The licensee or his agent shall establish, maintain, and follow a management system to provide for the development, revision, implementation, and enforcement of transportation physical protection procedures. The system shall include:

(i) Written security procedures which document the structure of the transportation security organization and which detail the duties of drivers and escorts and other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the security function.

(4) Neither the licensee or his agent shall permit an individual to act as an escort or other security organization member unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, of this part, "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission the licensee or his agent shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Armed escorts shall qualify in accordance with Appendix

B of this part at least every 12 months. Such requalification shall be documented.

(5) Armed escort and armed response force personnel armament shall include handguns, shotguns, and semiautomatic rifles, as described in Appendix B to this part.

**(e) Contingency and Response Plans and Procedures.**

(1) The licensee or his agent shall establish, maintain, and follow a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to strategic special nuclear material in transit subject to the provisions of this section. Such safeguards contingency plan shall be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plan."

(2) Upon detection of abnormal presence or activity of persons or vehicles attempting to penetrate a moving convoy or persons attempting to gain access to a parked cargo vehicle or upon evidence or indication of penetration of the cargo vehicle the armed escorts or other armed response personnel shall:

(i) Determine whether or not a threat exists;

(ii) Assess the extent of the threat, if any;

(iii) Take immediate concurrent measures to neutralize the threat by:

- (A) Making the necessary tactical moves to prevent or impede acts of radiological sabotage or theft of strategic special nuclear material, and
- (B) Informing local law enforcement agencies of the threat and requesting assistance.

(3) The licensee or his agent shall instruct every armed escort and all armed response personnel to prevent or impede acts of radiological sabotage or theft of strategic special material by using sufficient force to counter the force directed at him including the use of deadly force when armed escorts or armed response personnel have a reasonable belief that it is necessary in self-defense or in the defense of others.

**(f) Transfer and Storage of Strategic Special Nuclear Material for Domestic Shipments.**

(1) Strategic special nuclear material shall be placed in a protected area at transfer points if transfer is not immediate from one transport to another. Where a protected area is not available a controlled access area shall be established for the shipment. The transport may serve as a controlled access area.

(2) All transfers shall be protected by at least seven armed escorts or other armed personnel—one of whom shall

serve as commander. At least five of the armed personnel (including the commander) shall be available to protect the shipment and at least three of the five shall keep the strategic special nuclear material under continuous surveillance while it is at the transfer point. The two remaining armed personnel shall take up positions at a remote monitoring location. The remote location may be a radio-equipped vehicle or a nearby place, apart from the shipment area, so that a single act cannot remove the capability of the personnel protecting the shipment for calling for assistance. Each of the seven armed escorts or other armed personnel shall be capable of maintaining communication with each other. The commander shall have the capability to communicate with the personnel at the remote location and with local law enforcement agencies for emergency assistance. In addition, the armed escort personnel at the remote location shall have the capability to communicate with the law enforcement agencies and with the shipment movement control center. The commander shall call the remote location at least every 30 minutes to report the status of the shipment. If the calls are not received within the prescribed time, the personnel in the remote location shall request assistance from the law enforcement authorities, notify the shipment movement control center and initiate the appropriate contingency plans. Armed escorts or other armed personnel shall observe the opening of the cargo compartment of the incoming transport and ensure that the shipment is complete by checking locks and seals. A shipment loaded onto or transferred to another transport shall be checked to assure complete loading or transfer. Continuous visual surveillance of the cargo compartment shall be maintained up to the time the transport departs from the terminal. The escorts shall observe the transport until it has departed and shall notify the licensee or his agent of the latest status immediately thereafter.

(g) Access Control Subsystems and Procedures.

(1) A numbered picture badge identification procedure shall be used to identify all individuals who will have custody of a shipment. The identification procedure shall require that the individual who has possession of the strategic special nuclear material shall have, in advance, identification picture badges of all individuals who are to assume custody for the shipment. The shipment shall be released only when the individual who has possession of strategic special nuclear material has

assured positive identification of all of the persons assuming custody for the shipment by comparing the copies of the identification badges that have been received in advance to the identification badges carried by the individuals who will assume custody of the shipment.

(2) Access to protected areas, controlled access areas, transports, escort vehicles, aircraft, rail cars, and containers where strategic special nuclear material is located shall be limited to individuals who have been properly identified and have been authorized access to these areas.

(3) Strategic special nuclear material shall be shipped in containers that are protected by tamper-indicating seals. The containers also shall be locked if they are not in another locked container or transport. The outermost container or transport also shall be protected by tamper-indicating seals.

(h) Test and Maintenance Programs. The licensee or his agent shall establish, maintain and follow a test and maintenance program for communications equipment and other physical protection related devices and equipment used pursuant to this section which shall include the following:

(1) Tests and inspections shall be conducted during the installation, and construction of physical protection related subsystems and components to assure that they comply with their respective design criteria and performance specifications.

(2) Preoperational tests and inspections shall be conducted for physical protection related subsystems and components to demonstrate their effectiveness, availability, and reliability with respect to their respective design criteria and performance specifications.

(3) Operational tests and inspections shall be conducted for physical protection related subsystems and components to assure their maintenance in an operable and effective condition.

(4) Preventive maintenance programs shall be established for physical protection related subsystems and components to assure their continued maintenance in an operable and effective condition.

(5) All physical protection related subsystems and components shall be maintained in operable condition. Corrective action procedures and compensatory measures shall be developed and employed to assure that the effectiveness of the physical protection system is not reduced by any single failure or other contingencies affecting the operation of the physical protection related equipment or structures.

(6) The transportation security program shall be reviewed at least every 12 months or prior to each use, whichever is greater, by individuals independent of both security management and security supervision. Such a review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review and the audit along with recommendations for improvements shall be documented, reported to the responsible organization management, and kept available for inspection for a period of five years.

(i) Shipment by road.

(1) A detailed route plan shall be prepared which shows the routes to be taken, the refueling and rest stops, and the call-in times to the movement control center. All shipments shall be made on primary highways with minimum use of secondary roads. All shipments shall be made without intermediate stops except for refueling, rest or emergency stops.

(2) Cargo compartments of the trucks or trailers shall be locked and protected by tamper-indicating seals.

(3) The shipment shall be protected by one of the following methods:

(i) A specially designed cargo vehicle truck or trailer that reduces the vulnerability to theft. Design features of the truck or trailer shall permit immobilization of the truck or of the cargo-carrying portion of the vehicle and shall provide a deterrent to physical penetration of the cargo compartment. Two separate escort vehicles shall accompany the cargo vehicle. There shall be a total of seven armed escorts with at least two in the cargo vehicle. Escorts may also operate the cargo and escort vehicles.

(ii) An armored car cargo vehicle. Three separate escort vehicles shall accompany such a cargo vehicle. There shall be a total of seven armed escorts, with at least two in the cargo vehicle. Escorts may also operate the cargo and escort vehicles.

(4) All escort vehicles shall be bullet-resisting.

(5) Procedures shall be established to assure that no unauthorized persons or materials are on the cargo vehicle before strategic special nuclear material is loaded, or on the escort vehicles, immediately before the trip begins.

(6) Cargo and escort vehicles shall maintain continuous intraconvoy two-way communication. In addition at least

two of the vehicles shall be equipped with radio telephones having the capability of communicating with the movement control center. A redundant means of communication shall also be available. Calls to the movement control center shall be made at least every half hour to convey the status and position of the shipment. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify the law enforcement authorities and the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of this part and initiate the appropriate contingency plan.

(7) At refueling, rest, or emergency stops at least seven armed escorts or other armed personnel shall be available to protect the shipment and at least three armed escorts or other armed personnel shall maintain continuous visual surveillance of the cargo compartment.

(8) Transfers to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(j) Shipment by Air.

(1) All shipments on commercial cargo aircraft shall be accompanied by two armed escorts who shall be able to converse in a common language with the captain of the aircraft.

(2) Transfers of these shipments shall be minimized and shall be conducted in accordance with paragraph (f) of this section. Such shipments shall be scheduled so that the strategic special nuclear material is loaded last and unloaded first.

(3) At scheduled stops, at least seven armed escorts or other armed personnel shall be available to protect the shipment and at least three armed escorts or other armed personnel shall maintain continuous visual surveillance of the cargo compartment.

(4) Export shipments shall be accompanied by two armed escorts from the last terminal in the United States until the shipment is unloaded at a foreign terminal and primary responsibility for physical protection is assumed by agents of the consignee. While on foreign soil, the escorts may surrender their weapons to legally constituted local authorities. After leaving the last terminal in the United States the shipment shall be scheduled with no intermediate stops.

(5) Import shipments shall be accompanied by two armed escorts at all times within the geographical limits of the United States. These escorts shall provide physical protection for the shipment until relieved by verified agents of the U.S. consignee.

(6) Procedures shall be established to assure that no unauthorized persons or material are on the aircraft before strategic special nuclear material is loaded on board.

(7) Arrangements shall be made at all domestic airports to assure that the seven required armed escorts or other armed personnel are available and that the required security measures will be taken upon landing.

(8) Arrangements shall be made at the foreign terminal at which the shipment is to be unloaded to assure that security measures will be taken on arrival.

(k) Shipment by Rail.

(1) A shipment by rail shall be escorted by seven armed escorts in the shipment car or an escort car next to the shipment car of the train. At least three escorts shall keep the shipment car under continuous visual surveillance. Escorts shall detrain at stops when practicable and time permits to maintain the shipment cars under continuous visual surveillance and to check car or container locks and seals.

(2) Procedures shall be established to assure that no unauthorized persons or materials are on the shipment or escort car before strategic special nuclear material is loaded on board.

(3) Only containers weighing 5,000 lbs or more shall be shipped on open rail cars.

(4) A voice communication capability between the escorts and the movement control center shall be maintained. A redundant means of continuous communication also shall be available. Calls to the movement control center shall be made at least every half hour to convey the status and position of the shipment. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify the law enforcement authorities and the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of this part and initiate their contingency plan.

(5) Transfer to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(l) Shipment by Sea.

(1) Shipments shall be made only on container-ships. The strategic special nuclear material container(s) shall be loaded into exclusive use cargo containers conforming to American National Standards Institute (ANSI) MH5.1 or International Standards Organization (ISO) 1496. Locks and seals shall be inspected by the escorts whenever access is possible.

(2) All shipments shall be accompanied by two armed escorts who

shall be able to converse in a common language with the captain of the ship.

(3) Minimum domestic ports of call shall be scheduled and there shall be no scheduled transfer to other vessels after the shipment leaves the last port in the United States. Transfer to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(4) At all ports of call the escorts shall ensure that the shipment is not removed. At least two armed escorts or other armed personnel shall maintain continuous visual surveillance of the cargo area where the container is stored up to the time the ship departs.

(5) Export shipments shall be accompanied by two armed escorts from the last port in the United States until the shipment is unloaded at a foreign terminal and prime responsibility for physical protection is assumed by agents of the consignee. While on foreign soil, the escorts may surrender their weapons to legally constituted local authorities.

(6) Import shipments shall be accompanied by two armed escorts at all times within the geographical limits of the United States. These escorts shall provide physical protection for the shipment until relieved by verified agents of the U.S. consignee.

(7) Ship-to-shore communications shall be available, and a ship-to-shore contact shall be made every six hours to relay position information, and the status of the shipment.

(8) Arrangements shall be made at the foreign terminals at which the shipment is to be unloaded to assure that security measures will be taken upon arrival.

§ 73.27 Notification requirements.

(a)(1) A licensee who delivers formula quantities of strategic special nuclear material to a carrier for transport shall immediately notify the consignee by telephone, telegraph, or teletype, of the time of departure of the shipment, and shall notify or confirm with the consignee the method of transportation, including the names of carriers, and the estimated time of arrival of the shipment at its destination. (2) In the case of a shipment (f.o.b.) the point where it is delivered to a carrier for transport, a licensee shall, before the shipment is delivered to the carrier, obtain written certification from the licensee who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by §§ 73.25 and 73.26 for licensed shipments have been made. When a contractor exempt from the requirements for a Commission license is the consignee of a shipment, the licensee shall, before the shipment is

delivered to the carrier, obtain written certification from the contractor who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by the United States Department of Energy Order Nos. 5632.1 or 5632.2, as appropriate, have been made. (3) A licensee who delivers formula quantities of strategic special nuclear material to a carrier for transport or releases such special nuclear material f.o.b. at the point where it is delivered to a carrier for transport shall also make arrangements with the consignee to be notified immediately by telephone and telegraph, teletype, or cable, of the arrival of the shipment at its destination or of any such shipment that is lost or unaccounted for after the estimated time of arrival at its destination.

(b) Each licensee who receives a shipment of formula quantities of strategic special nuclear material shall immediately notify by telephone and telegraph or teletype, the person who delivered the material to a carrier for transport and the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of the arrival of the shipment at its destination. When a United States Department of Energy license-exempt contractor is the consignee, the licensee who is the consignor shall notify by telephone and telegraph, or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of the arrival of the shipment at its destination immediately upon being notified of the receipt of the shipment by the license-exempt contractor as arranged pursuant to paragraph (a)(3) of this section. In the event such a shipment fails to arrive at its destination at the estimated time, or in the case of an export shipment, the licensee who exported the shipment, shall immediately notify by telephone and telegraph or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of this part, and the licensee or other person who delivered the material to a carrier for transport. The licensee who made the physical protection arrangements shall also immediately notify by telephone and telegraph, or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of the action being taken to trace the shipment.

(c) Each licensee who makes arrangements for physical protection of a shipment of formula quantities of strategic special nuclear material as required by §§ 73.25 and 73.26 shall immediately conduct a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time and file a report with the Commission as specified in § 73.71.

**§ 73.45 Performance Capabilities for Fixed Site Physical Protection Systems.**

(a) To meet the general performance requirements of § 73.20 a fixed site physical protection system shall include the performance capabilities described in paragraphs (b) through (g) of this section unless otherwise authorized by the Commission.

(b) Prevent unauthorized access of persons, vehicles and materials into material access areas and vital areas. To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized access or introduce unauthorized material across material access or vital area boundaries by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons and material to material access and vital area entry control points and to delay any unauthorized penetration attempts by persons or materials sufficient to assist detection and permit a response that will prevent the penetration; and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized penetration attempts by persons or materials at the time of the attempt so that the response can prevent the unauthorized access or penetration.

(2) Detect attempts to gain unauthorized access or introduce unauthorized materials into material access areas or vital areas by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and entry criteria for both persons and materials; and

(ii) Entry controls and procedures to verify the identity of persons and materials and assess such identity against current authorization schedules and entry criteria before permitting entry and to initiate response measures to deny unauthorized entries.

(c) Permit only authorized activities and conditions within protected areas, material access areas, and vital areas. To achieve this capability the physical protection system shall:

(1) Detect unauthorized activities or conditions within protected areas, material access areas and vital areas using the following subsystems and subfunctions:

(i) Controls and procedures that establish current schedules of authorized activities and conditions in defined areas;

(ii) Boundaries to define areas within which the authorized activities and conditions are permitted; and

(ij) Detection and surveillance subsystems and procedures to discover and assess unauthorized activities and conditions and communicate them so that response can be such as to stop the activity or correct the conditions to satisfy the general performance objective and requirements of § 73.20(a).

(d) Permit only authorized placement and movement of strategic special nuclear material within material access areas. To achieve this capability the physical protection system shall:

(1) Detect unauthorized placement and movement of strategic special nuclear material within the material access area using the following subsystems and subfunctions:

(i) Controls and procedures to delineate authorized placement and control for strategic special nuclear material;

(ii) Controls and procedures to establish current authorized placement and movement of all strategic special nuclear material within material access areas;

(iii) Controls and procedures to maintain knowledge of the identity, quantity, placement, and movement of all strategic special nuclear material within material access areas; and

(iv) Detection and monitoring subsystems and procedures to discover and assess unauthorized placement and movement of strategic special nuclear material and communicate them so that response can be such as to return the strategic special nuclear material to authorized placement or control.

(e) Permit removal of only authorized and confirmed forms and amounts of strategic special nuclear material from material access areas. To achieve this capability the physical protection system shall:

(1) Detect attempts at unauthorized removal of strategic special nuclear material from material access areas by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons and materials exiting a material access area to exit control points and to delay any unauthorized strategic special nuclear material removal attempts sufficient to assist detection and assessment and

permit a response that will prevent the removal; and satisfy the general performance objective and requirements of § 73.20(a); and

(ii) Detection subsystems and procedures to detect, assess and communicate any attempts at unauthorized removal of strategic special nuclear material so that response to the attempt can be such as to prevent the removal and satisfy the general performance objective and requirements of § 73.20(a).

(2) Confirm the identity and quantity of strategic special nuclear material presented for removal from a material access area and detect attempts at unauthorized removal of strategic special nuclear material from material access areas by deceit using the following subsystems and subfunctions:

(i) Authorization controls and procedures to provide current schedules for authorized removal of strategic special nuclear material which specify the authorized properties and quantities of material to be removed, the persons authorized to remove the material, and the authorized time schedule;

(ii) Removal controls and procedures to identify and confirm the properties and quantities of material being removed and verify the identity of the persons making the removal and time of removal and assess these against the current authorized removal schedule before permitting removal; and

(iii) Communications subsystems and procedures to provide for notification of an attempted unauthorized or unconfirmed removal so that response can be such as to prevent the removal and satisfy the general performance objective and requirements of § 73.20(a).

(f) Provide for authorized access and assure detection of and response to unauthorized penetrations of the protected area to satisfy the general performance objective and requirements of § 73.20(a). To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized access or introduce unauthorized persons, vehicles, or materials into the protected area by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons, vehicles, and materials to protected area entry control points; and to delay any unauthorized penetration attempts or the introduction of unauthorized vehicles or materials sufficient to assist detection and assessment and permit a response that will prevent the penetration or prevent such penetration and satisfy the general performance objective and requirements of § 73.20(a); and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized access or penetrations or such attempts by persons, vehicles, or materials at the time of the act or the attempt so that the response can be such as to prevent the unauthorized access or penetration, and satisfy the general performance objective and requirements of § 73.20(a).

(2) Detect attempts to gain unauthorized access or introduce unauthorized persons, vehicles, or materials into the protected area by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and entry criteria for persons, vehicles, and materials; and

(ii) Entry controls and procedures to verify the identity of persons, materials and vehicles and assess such identity against current authorization schedules before permitting entry and to initiate response measures to deny unauthorized access.

(g) Response. Each physical protection program shall provide a response capability to assure that the five capabilities described in paragraphs (b) through (f) of this section are achieved and that adversary forces will be engaged and impeded until offsite assistance forces arrive. To achieve this capability a licensee shall:

(1) Establish a security organization to:

(i) Provide trained and qualified personnel to carry out assigned duties and responsibilities; and

(ii) Provide for routine security operations and planned and predetermined response to emergencies and safeguards contingencies.

(2) Establish a predetermined plan to respond to safeguards contingency events.

(3) Provide equipment for the security organization and facility design features to:

(i) Provide for rapid assessment of safeguards contingencies;

(ii) Provide for response by assigned security organization personnel which is sufficiently rapid and effective to achieve the predetermined objective of the response; and

(iii) Provide protection for the assessment and response personnel so that they can complete their assigned duties.

(4) Provide communications networks to:

(i) Transmit rapid and accurate security information among onsite forces for routine security operation,

assessment of a contingency, and response to a contingency; and

(ii) Transmit rapid and accurate detection and assessment information to offsite assistance forces.

(5) Assure that a single adversary action cannot destroy the capability of the security organization to notify offsite response forces of the need for assistance.

#### § 73.46 Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures.

(a) A licensee physical protection system established pursuant to the general performance objective and requirements of § 73.20(a) and the performance capability requirements of § 73.45 shall include, but are not necessarily limited to, the measures specified in paragraphs (b) through (h) of this section. The Commission may require, depending on individual facility and site conditions, alternate or additional measures deemed necessary to meet the general performance objective and requirements of § 73.20. The Commission also may authorize protection measures other than those required by this section if, in its opinion, the overall level of performance meets the general performance objective and requirements of § 73.20 and the performance capability requirements of § 73.45.

#### (b) Security Organization.

(1) The licensee shall establish a security organization, including guards. If a contract guard force is utilized for site security, the licensee's written agreement with the contractor will clearly show that (i) the licensee is responsible to the Commission for maintaining safeguards in accordance with Commission regulations and the licensee's security plan, (ii) the NRC may inspect, copy, and take away copies of all reports and documents required to be kept by Commission regulations, orders, or applicable license conditions whether such reports and documents are kept by the licensee or the contractor, (iii) the requirement, in § 73.46(b)(4) of this section that the licensee demonstrate the ability of physical security personnel to perform their assigned duties and responsibilities, include demonstration of the ability of the contractor's physical security personnel to perform their assigned duties and responsibilities in carrying out the provisions of the Security Plan and these regulations, and (iv) the contractor will not assign any personnel to the site who have not first been made aware of these responsibilities.

(2) The licensee shall have onsite at all times at least one full time member of the security organization with authority to direct the physical protection activities of the security organization.

(3) The licensee shall have a management system to provide for the development, revision, implementation, and enforcement of security procedures. The system shall include:

(i) Written security procedures which document the structure of the security organization and which detail the duties of guards, watchmen and other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the security function.

(4) The licensee shall not permit an individual to act as a guard, watchman, armed response person, or other member of the security organization unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B of this part "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission the licensee shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, or other member of the security organization, whether a licensee or contractor employee, shall requalify in accordance with Appendix B of this part at least every 12 months. Such requalification shall be documented.

(5) Within any given period of time, a member of the security organization may not be assigned to, or have direct operational control over, more than one of the redundant elements of a physical protection subsystem if such assignment or control could result in the loss of effectiveness of the subsystem.

(6) Guard and armed response force armament maintained on site shall include handguns, shotguns, and semiautomatic rifles, as described in Appendix B to this part.

(c) Physical Barrier Subsystems

(1) Vital equipment shall be located only within a vital area and strategic special nuclear material shall be stored or processed only in a material access area. Both vital areas and material access areas shall be located within a protected area so that access to vital equipment and to strategic special nuclear material requires passage through at least two physical barriers. More than one vital area or material access area may be located within a single protected area.

(2) The physical barriers at the perimeter of the protected area shall be separated from any other barrier designated as a physical barrier for a vital area or material access area within the protected area.

(3) Isolation zones shall be maintained in outdoor areas adjacent to the physical barrier at the perimeter of the protected area and shall be large enough to permit observation of the activities of people on either side of that barrier in the event of its penetration. If parking facilities are provided for employees or visitors, they shall be located outside the isolation zone and exterior to the protected area.

(4) Isolation zones and all exterior areas within the protected area shall be provided with illumination sufficient for the monitoring and observation requirements of paragraphs (c)(3), (e)(8), (h)(4) and (h)(6) of this section, but not less than 0.2 footcandle measured horizontally at ground level.

(5) Strategic special nuclear material, other than alloys, fuel elements or fuel assemblies, shall:

(i) Be stored in a vault when not undergoing processing if the material can be used directly in the manufacture of a nuclear explosive device. Vaults used to protect such material shall be capable of preventing entry to stored SSNM by a single action in a forced entry attempt, except as such single action would both destroy the barrier and render contained SSNM incapable of being removed, and shall provide sufficient delay to prevent removal of stored SSNM prior to arrival of response personnel capable of neutralizing the design basis threat stated in § 73.1.

(ii) Be stored in tamper-indicating containers;

(iii) Be processed only in material access areas constructed with barriers that provide significant delay to penetration; and

(iv) be kept in locked compartments or locked process equipment while undergoing processing except when personally attended.

(6) Enriched uranium scrap (enriched to 20% or greater) in the form of small pieces, cuttings, chips, solutions or in other forms which result from a manufacturing process, contained in 30 gallon or larger containers with a uranium-235 content of less than 0.25 grams per liter, may be stored within a locked and separately fenced area within a larger protected area provided that the storage area fence is no closer than 25 feet to the perimeter of the protected area. The storage area when unoccupied shall be protected by a guard or watchman who shall patrol at

intervals not exceeding 4 hours, or by intrusion alarms.

(d) Access Control Subsystems and Procedures

(1) A numbered picture badge identification subsystem shall be used for all individuals who are authorized access to protected areas without escort. An individual not employed by the licensee but who requires frequent and extended access to protected, material access, or vital areas may be authorized access to such areas without escort provided that he receives a picture badge upon entrance into the protected area and returns the badge upon exit from the protected area, and that the badge indicates, (i) Non-employee—no escort required; (ii) areas to which access is authorized and (iii) the period for which access has been authorized. Badges shall be displayed by all individuals while inside the protected areas.

(2) Unescorted access to vital areas, material access areas and controlled access areas shall be limited to individuals who are authorized access to the material and equipment in such areas, and who require such access to perform their duties. Access to material access areas shall include at least two individuals. Authorization for such individuals shall be indicated by the issuance of specially coded numbered badges indicating vital areas, material access areas, and controlled access areas to which access is authorized. No activities other than those which require access to strategic special nuclear material or to equipment used in the processing, use, or storage of strategic special nuclear material, or necessary maintenance, shall be permitted within a material access area.

(3) The licensee shall establish and follow procedures that will permit access control personnel to identify those vehicles that are authorized and those materials that are not authorized entry to protected, material access, and vital areas.

(4) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals for firearms, explosives, and incendiary devices, shall be made and authorization shall be checked at such points. United States Department of Energy couriers engaged in the transport of special nuclear material need not be searched. Licensee employees having an NRC or United States Department of Energy access authorization shall be searched at least on a random basis. The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within

a structure, with bullet-resisting walls, doors, ceiling, floor, and windows.

(5) At the point of personnel and vehicle access into a protected area, all hand-carried packages shall be searched for firearms, explosives, and incendiary devices except those packages carried by persons having an NRC or DOE access authorization which shall be searched on a random basis when the person carrying them is selected for search.

(6) All packages and material for delivery into the protected area shall be checked for proper identification and authorization and searched on a random basis for firearms, explosives, and incendiary devices prior to admittance into the protected area, except those Commission approved delivery and inspection activities specifically designated by the licensee to be carried out within material access, vital, or protected areas for reasons of safety, security or operational necessity.

(7) All vehicles, except United States Department of Energy vehicles engaged in transporting special nuclear material and emergency vehicles under emergency conditions, shall be searched for firearms, explosives, and incendiary devices prior to entry into the protected area. Vehicle areas to be searched shall include the cab, engine compartment, undercarriage, and cargo area.

(8) All vehicles, except designated licensee vehicles, requiring entry into the protected area shall be escorted by a member of the security organization while within the protected area, and to the extent practicable shall be off-loaded in an area that is not adjacent to a vital area. Designated licensee vehicles shall be limited in their use to onsite plant functions and shall remain in the protected area except for operational, maintenance, security and emergency purposes. The licensee shall exercise positive control over all such designated vehicles to assure that they are used only by authorized persons and for authorized purposes.

(9) The licensee shall control all points of personnel and vehicle access to material access areas, vital areas and controlled access areas. Identification of personnel and vehicles shall be made and authorization checked at such points. Prior to entry into a material access area, packages shall be searched for firearms, explosives, and incendiary devices. All vehicles, materials and packages, including trash, wastes, tools and equipment exiting from a material access area shall be searched for concealed strategic special nuclear material by a team of at least two individuals who are not authorized access to that material access area.

Each individual exiting a material access area shall undergo at least two separate searches for concealed strategic special nuclear material. For individuals exiting an area that contains only alloyed or encapsulated strategic special nuclear material, the second search may be conducted in a random manner.

(10) Before exiting from a material access area, containers of contaminated wastes shall be drum scanned and tamper sealed by at least two individuals, working and recording as a team, who do not have access to material processing and storage areas.

(11) Strategic special nuclear material being prepared for shipment offsite, including product, samples and scrap, shall be packed and placed in sealed containers in the presence of at least two individuals working as a team who shall verify and certify the content of each shipping container through the witnessing of gross weight measurements and nondestructive assay, and through the inspection of tamper seal integrity and associated seal records.

(12) Areas used for preparing strategic special nuclear material for shipment and areas used for packaging and screening trash and wastes shall be controlled access areas and shall be separated from processing and storage areas.

(13) Individuals not permitted by the licensee to enter protected areas without escort shall be escorted by a watchman, or other individual designated by the licensee, while in a protected area and shall be badged to indicate that an escort is required. In addition, the individual shall be required to register his name, date, time, purpose of visit and employment affiliation, citizenship, and name of the individual to be visited.

(14) All keys, locks, combinations and related equipment used to control access to protected, material access, vital, and controlled access areas shall be controlled to reduce the probability of compromise. Whenever there is evidence that a key, lock, combination, or related equipment may have been compromised it shall be changed. Upon termination of employment of any employee, keys, locks, combinations, and related equipment to which that employee had access, shall be changed.

(e) Detection, Surveillance and Alarm Subsystems and Procedures

(1) The licensee shall provide an intrusion alarm subsystem with a capability to detect penetration through the isolation zone and to permit response action.

(2) All emergency exits in each protected, material access, and vital

area shall be locked to prevent entry from the outside and alarmed to provide local visible and audible alarm annunciation.

(3) All unoccupied vital areas and material access areas shall be locked and protected by an intrusion alarm subsystem which will alarm upon the entry of a person anywhere into the area, upon exit from the area, and upon movement of an individual within the area, except that for process material access areas only the location of the strategic special nuclear material within the area is required to be so alarmed. Vaults and process areas that contain strategic special nuclear material that has not been alloyed or encapsulated shall also be under the surveillance of closed circuit television that is monitored in both alarm stations. Additionally, means shall be employed which require that an individual other than an alarm station operator be present at or have knowledge of access to such unoccupied vaults or process areas.

(4) All manned access control points in the protected area barrier, all security patrols and guard stations within the protected area, and both alarm stations shall be provided with duress alarms.

(5) All alarms required pursuant to this section shall annunciate in a continuously manned central alarm station located within the protected area and in at least one other independent continuously manned onsite station not necessarily within the protected area, so that a single act cannot remove the capability of calling for assistance or responding to an alarm. The alarm stations shall be controlled access areas and their walls, doors, ceiling, floor, and windows shall be bullet-resisting. The central alarm station shall be located within a building so that the interior of the central alarm station is not visible from the perimeter of the protected area. This station may not contain any operational activities that would interfere with the execution of the alarm response function.

(6) All alarms required by this section shall remain operable from independent power sources in the event of the loss of normal power. Switchover to standby power shall be automatic and shall not cause false alarms on annunciator modules.

(7) All alarm devices including transmission lines to annunciators shall be tamper indicating and self-checking e.g., an automatic indication shall be provided when a failure of the alarm system or a component occurs, when there is an attempt to compromise the system, or when the system is on standby power. The annunciation of an

alarm at the alarm stations shall indicate the type of alarm (e.g., intrusion alarm, emergency exit alarm, etc.) and location. The status of all alarms and alarm zones shall be indicated in the alarm stations.

(8) All exterior areas within the protected area shall be monitored or periodically checked to detect the presence of unauthorized persons, vehicles, materials, or unauthorized activities.

(9) Methods to observe individuals within material access areas to assure that strategic special nuclear material is not moved to unauthorized locations or in an unauthorized manner shall be provided and used on a continuing basis.

(f) Communication Subsystems

(1) Each guard, watchman, or armed response individual on duty shall be capable of maintaining continuous communication with an individual in each continuously manned alarm station required by paragraph (e)(5) of this section, who shall be capable of calling for assistance from other guards, watchmen, and armed response personnel and from law enforcement authorities.

(2) Each alarm station required by paragraph (e)(5) of this section shall have both conventional telephone service and radio or microwave transmitted two-way voice communication, either directly or through an intermediary, for the capability of communication with the law enforcement authorities.

(3) Non-portable communications equipment controlled by the licensee and required by this section shall remain operable from independent power sources in the event of the loss of normal power.

(g) Test and Maintenance Programs

The licensee shall have a test and maintenance program for intrusion alarms, emergency exit alarms, communications equipment, physical barriers, and other physical protection related devices and equipment used pursuant to this section that shall provide for the following:

(1) Tests and inspections during the installation and construction of physical protection related subsystems and components to assure that they comply with their respective design criteria and performance specifications.

(2) Preoperational tests and inspections of physical protection related subsystems and components to demonstrate their effectiveness and availability with respect to their respective design criteria and performance specifications.

(3) Operational tests and inspections of physical protection related subsystems and components to assure their maintenance in an operable and effective condition, including:

(i) Testing of each intrusion alarm at the beginning and end of any period that it is used. If the period of continuous use is longer than seven days, the intrusion alarm shall also be tested at least once every seven days.

(ii) Testing of communications equipment required for communications onsite, including duress alarms, for performance not less frequently than once at the beginning of each security personnel work shift. Communications equipment required for communications offsite shall be tested for performance not less than once a day.

(4) Preventive maintenance programs shall be established for physical protection related subsystems and components to assure their continued maintenance in an operable and effective condition.

(5) All physical protection related subsystems and components shall be maintained in operable condition. The licensee shall develop and employ corrective action procedures and compensatory measures to assure that the effectiveness of the physical protection system is not reduced by failure or other contingencies affecting the operation of the security related equipment or structures. Repairs and maintenance shall be performed by at least two individuals working as a team who have been trained in the operation and performance of the equipment. The security organization shall be notified before and after service is performed and shall conduct performance verification tests after the service has been completed.

(6) The security program shall be reviewed at least every 12 months by individuals independent of both security management and security supervision. The review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, and audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review, audit, and evaluation along with recommendations, corrections and improvements, if any, shall be documented, reported to the licensee's plant management, and to corporate management at least one level higher than that having responsibility for the day to day plant operations. The reports shall be kept available at the plant for inspection for a period of five years.

(h) Contingency and Response Plans and Procedures

(1) The licensee shall have a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the strategic special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans shall be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plans." Contingency plans shall include, but not be limited to, the response requirements in paragraphs (h)(2) through (h)(5) of this section.

(2) The licensee shall establish and document response arrangements that have been made with local law enforcement authorities.

(3) A minimum of five (5) guards shall be available at the facility to fulfill assessment and response requirements. In addition a force of guards or armed response personnel also shall be available to provide assistance as necessary. The size and availability of the additional force shall be determined on the basis of site-specific considerations that could affect the ability of the total onsite response force to engage and impede the adversary force until offsite assistance arrives. The reason for determining the total number and availability of onsite armed response personnel shall be included in the physical protection plans submitted to the Commission for approval.

(4) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, a material access area, or a vital area, or upon evidence or indication of intrusion into a protected area, a material access area, or a vital area, the licensee security organization shall:

(i) Determine whether or not a threat exists,

(ii) Assess the extent of the threat, if any,

(iii) Take immediate concurrent measures to neutralize the threat by:

(A) Requiring responding guards or other armed response personnel to interpose themselves between vital areas and material access areas and any adversary attempting entry for purposes of radiological sabotage or theft of strategic special nuclear material and to intercept any person exiting with special nuclear material, and

(B) Informing local law enforcement agencies of the threat and requesting assistance.

(5) The licensee shall instruct every guard and all armed response personnel to prevent or impede acts of radiological sabotage or theft of strategic special

nuclear material by using force sufficient to counter the force directed at him including the use of deadly force when the guard or other armed response person has a reasonable belief that it is necessary in self-defense or in the defense of others.

(6) To facilitate initial response to detection of penetration of the protected area and assessment of the existence of a threat, a capability of observing the isolation zones and the physical barrier at the perimeter of the protected area shall be provided, preferably by means of closed circuit television or by other suitable means which limit exposure of responding personnel to possible attack.

(7) Alarms occurring within unoccupied vaults and unoccupied material access areas containing unalloyed or unencapsulated strategic special nuclear material shall be assessed by at least two security personnel using closed circuit television (CCTV) or other remote means.

(8) Alarms occurring within unoccupied material access areas that contain only alloyed or encapsulated strategic special nuclear material shall be assessed as in paragraph (h)(7) of this section or by at least two security personnel who shall undergo a search before exiting the material access area.

§ 73.47 [Renumbered as § 73.67]

20. Section 73.47 is renumbered to become § 73.67.

21. The undesignated first paragraph of § 73.50 is revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

Each licensee who possesses, uses, or stores formula quantities of strategic special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding other than at a nuclear reactor facility licensed pursuant to Part 50 of this chapter shall comply with the following:

§ 73.50 [Amended]

22. Section 73.50(c)(1) is amended to change the reference to "an NRC or ERDA personnel security clearance" to reference to "an NRC or United States Department of Energy access authorization."

23. Section 73.55(a) is revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

\* \* \* \* \*

(a) General Performance Objective and Requirements

The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threat of radiological sabotage as stated in § 73.1(a). To achieve this general performance objective, the onsite physical protection system and security organization shall include, but not necessarily be limited to, the capabilities to meet the specific requirements contained in paragraphs (b) through (h) of this section. The Commission may authorize an applicant or licensee to provide measures for protection against radiological sabotage other than those required by this section if the applicant or licensee demonstrates that the measures have the same high assurance objective as specified in this paragraph and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by paragraphs (b)-(h) of this section and meets the general performance requirements of this section.

Specifically, in the special cases of licensed operating reactors with adjacent reactor powerplants under construction, the licensee shall provide and maintain a level of physical protection of the operating reactor against radiological sabotage equivalent to the requirements of this section.

24. Section 73.55(b) is revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

\* \* \* \* \*

(b) Physical Security Organization.

(1) The licensee shall establish a security organization, including guards, to protect his facility against radiological sabotage. If a contract guard force is utilized for site security, the licensee's written agreement with the contractor will clearly show that (i) the licensee is responsible to the Commission for maintaining safeguards in accordance with Commission regulations and the licensee's security

plan, (ii) the NRC may inspect, copy, and take away copies of all reports and documents required to be kept by Commission regulations, orders, or applicable license conditions whether such reports and documents are kept by the licensee or the contractor, (iii) the requirement in § 73.55(b)(4) of this section that the licensee demonstrate the ability of physical security personnel to perform their assigned duties and responsibilities, includes demonstration of the ability of the contractor's physical security personnel to perform their assigned duties and responsibilities in carrying out the provisions of the Security Plan and these regulations, and (iv) the contractor will not assign any personnel to the site who have not first been made aware of these responsibilities.

(2) At least one full time member of the security organization who has the authority to direct the physical protection activities of the security organization shall be onsite at all times.

(3) The licensee shall have a management system to provide for the development, revision, implementation, and enforcement of security procedures. The system shall include:

(i) Written security procedures which document the structure of the security organization and which detail the duties of guards, watchmen and other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the security functions.

(4) The licensee shall not permit an individual to act as a guard, watchman or armed response person, or other member of the security organization unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, of this part "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with Appendix B of this part at least every 12 months. Such requalification shall be documented. By (300 days after the rule becomes effective) each licensee shall submit a training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested; and qualified to assure that these individuals meet the

requirements of this paragraph. The training and qualifications plan shall include a schedule to show how all security personnel will be qualified by (within two years after the rule becomes effective) or within two years after the submitted plan is approved, whichever is later. The training and qualifications plan shall be followed by the licensee after (500 days after the rule becomes effective) or 60 days after the submitted plan is approved by the NRC, whichever is later.

25. Section 73.55(g) is amended to add a new paragraph (4) to read as follows:

**§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.**

\* \* \* \* \*

**(g) Testing and Maintenance.**

\* \* \* \* \*

(4) The security program shall be reviewed at least every 12 months by individuals independent of both security management and security supervision. The review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program and an audit of commitments established for response by local law enforcement authorities. The results of the review audit and evaluation along with recommendations for corrections and improvements, if any, shall be documented, reported to the licensee's plant management and to corporate management at least one level higher than that having responsibility for the day to day plant operation. The reports shall be kept available at the plant for inspection for a period of five years.

26. Section 73.55(h) is amended to renumber paragraph (h)(5) as (h)(6) and revise paragraph (h)(4) as paragraphs (h)(4) and (5) as follows:

**§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.**

\* \* \* \* \*

**(h) Response requirement.**

\* \* \* \* \*

(4) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, material access area, or a vital area; or upon evidence or indication of intrusion into a protected area, a material access area, or a vital area, the licensee security organization shall:

(i) Determine whether or not a threat exists,

(ii) Assess the extent of the threat, if any,

(iii) Take immediate concurrent measures to neutralize the threat by:

(A) Requiring responding guards or other armed response personnel to interpose themselves between vital areas and material access areas and any adversary attempting entry for the purpose of radiological sabotage or theft of special nuclear material and to intercept any person exiting with special nuclear material, and,

(B) Informing local law enforcement agencies of the threat and requesting assistance.

(5) The licensee shall instruct every guard and all armed response personnel to prevent or impede attempted acts of theft or radiological sabotage by using force sufficient to counter the force directed at him including the use of deadly force when the guard or other armed response person has a reasonable belief it is necessary in self-defense or in the defense of others.

\* \* \* \* \*

27. The undesignated first paragraph of § 73.60 is revised to read as follows:

**§ 73.60 Additional requirements for the physical protection of special nuclear material at non-power reactors.**

Each non-power reactor licensee who, pursuant to the requirements of Part 70 of this chapter, possesses at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams=(grams contained in U-235)+2.5 (grams U-233+grams plutonium) shall protect the special nuclear material from theft or diversion pursuant to the requirements of § 73.67 (a), (b), (c), and (d) and as follows, except that a licensee is exempt from the requirements of this section to the extent that he possesses or uses special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of three feet from any accessible surface without intervening shielding.

28. The prefatory language of § 73.70 and § 73.70 (c) and (g) is revised to read as follows:

**§ 73.70 Records.**

Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.55 or § 73.60 shall keep the following records:

\* \* \* \* \*

(c) A register of visitors, vendors, and other individuals not employed by the licensee pursuant to §§ 73.46(d)(10), 73.55(d)(6) or § 73.60.

\* \* \* \* \*

(g) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification, and any other information to confirm the means utilized to comply with §§ 73.25, 73.26 and 73.27. Such information shall be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan including monitor changes, trace investigations and others shall also be recorded.

\* \* \* \* \*

**§ 73.71 [Amended]**

29. Section 73.71(a) is amended to change the reference to § 73.36(f) to reference § 73.27(c) and to change the references to § 73.47(e)(3)(vi), or § 73.47(g)(3)(iii) to reference § 73.67(e)(3)(vi), or § 73.67(g)(3)(iii).

30. Part 73 is amended to change the term "industrial sabotage" to "radiological sabotage" wherever it appears.

**PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274**

**§ 150.14 [Amended]**

31. Section 150.14 is amended to change the reference to § 73.47 to reference § 73.67.

Effective date: March 25, 1980.

(Secs. 53, 161b, 161i, 161o, Pub. L. 83-703, 68 Stat. 930, 948-50, as amended Pub. L. 85-507, 72 Stat. 327, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242-1243, as amended Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Washington, D.C., this 21st day of November 1979.

For the Nuclear Regulatory Commission.  
Samuel J. Chilk,  
Secretary of the Commission.

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## 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

#### Executive Orders:

12170.....65729  
12171.....66565  
12172.....67947

#### 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  
No. 80-4 of  
October 24, 1979.....66175  
No. 80-5 of  
November 13,  
1979.....67071  
No. 80-6 of  
November 13,  
1979.....67073

#### Proclamations:

3279 (Amended by  
Proc. 4702).....65581  
4698.....63509  
4699.....63511  
4700.....63513  
4701.....64781  
4702.....65581  
4703.....66563  
4704.....67945

### 5 CFR

110.....67624  
177.....65025  
213.....63079, 64064-64067,  
65025-65031, 65959-65961,  
66567-66571, 67619-67624  
293.....65031  
297.....65031  
302.....66573  
315.....63080, 66574  
338.....66571  
351.....65046  
733.....63080  
1201.....65048  
1206.....65048  
1312.....64783

#### Proposed Rules:

531.....65077

### 6 CFR

705.....64276, 66534, 67060,  
67949  
706.....64284, 66534, 67060,  
67949  
707.....66534, 67949

### 7 CFR

2.....66177  
272.....64386, 66574  
273.....64067  
401.....64786,  
67343, 67349, 67355, 67361,  
67954  
423.....67343  
424.....67349  
425.....67954  
427.....62879  
428.....67355  
429.....62879  
431.....64786, 66178  
432.....67361  
722.....65962  
724.....63081  
905.....65962, 66779  
907.....64838, 65963, 66780  
910.....63081, 65049, 65963,  
67075  
959.....63082, 65379  
971.....65964, 66178  
981.....67075  
989.....64397, 66574  
1421.....67077  
1423.....67080  
1424.....67081  
1427.....67083, 67084  
1434.....67081  
1464.....65965-65967  
1701.....64069  
1942.....62880  
1962.....64794  
1980.....64797  
2024.....65968  
3100.....66179

#### Proposed Rules:

Subtitle A.....65862  
Ch. I.....65862  
Ch. II.....65862  
Ch. III.....65862  
Ch. IV.....65862  
Ch. V.....65862  
Ch. VI.....65862  
Ch. VII.....65862  
Ch. IX.....65862, 67990  
Ch. X.....65862  
Ch. XI.....65862  
Ch. XII.....65862  
Ch. XIV.....65862  
Ch. XV.....65862  
Ch. XVI.....65862  
Ch. XVII.....65862  
Ch. XVIII.....65862  
Ch. XXI.....65862  
Ch. XXIV.....65862  
Ch. XXV.....65862  
Ch. XXVI.....65862  
Ch. XXVII.....65862  
Ch. XXVIII.....65862  
Ch. XXIX.....65862

## 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  
65379-65580.....13  
65581-65728.....14  
65729-65958.....15  
65959-66174.....16  
66175-66562.....19  
66563-66778.....20  
66779-67070.....21  
67071-67342.....23  
67343-67618.....26  
67619-67944.....27  
67945-68430.....28

210..... 63107  
 225..... 66605  
 235..... 63107  
 271..... 63496, 65077  
 272..... 63496, 65318  
 273..... 63496, 65989  
 274..... 65318  
 276..... 65318  
 277..... 65318  
 278..... 63496  
 318..... 65080  
 906..... 67130  
 910..... 64839  
 959..... 65592  
 971..... 67131  
 982..... 63547  
 989..... 62901  
 1001..... 65989  
 1002..... 65989  
 1004..... 65989, 67427  
 1006..... 65989  
 1007..... 65989  
 1011..... 65989  
 1012..... 65989  
 1013..... 65989  
 1030..... 65989  
 1032..... 65989  
 1033..... 65989  
 1036..... 65989  
 1040..... 65989  
 1044..... 65989  
 1046..... 65989  
 1049..... 65594, 65989  
 1050..... 65989  
 1062..... 65989  
 1064..... 65989  
 1065..... 65989  
 1068..... 65989  
 1071..... 65989  
 1073..... 65989  
 1075..... 65989  
 1076..... 65989  
 1079..... 65989, 67132  
 1094..... 65989  
 1096..... 65989  
 1097..... 65989  
 1098..... 65989  
 1099..... 65989  
 1102..... 65989  
 1104..... 65989  
 1106..... 65989  
 1108..... 65989  
 1120..... 65989  
 1124..... 65989  
 1125..... 65989  
 1126..... 65989  
 1131..... 65989  
 1132..... 65989  
 1133..... 64087, 65989  
 1134..... 65989  
 1135..... 65989  
 1136..... 65989  
 1137..... 65989  
 1138..... 65989  
 1139..... 65989  
 1421..... 67134  
 1464..... 63107  
 1924..... 65991  
 1980..... 67134  
 3100..... 65768

**8 CFR**  
 3..... 67960  
 214..... 65726, 65727

**9 CFR**  
 1..... 63488  
 2..... 63488  
 3..... 63488  
 78..... 65969  
 92..... 63082  
 113..... 63083, 67087  
 160..... 63488  
 161..... 63488  
 316..... 67087  
 325..... 67626  
**Proposed Rules:**  
 Ch. I..... 65862  
 Ch. II..... 65862  
 Ch. III..... 65862  
 Ch. VI..... 65862  
 318..... 65403  
 381..... 65403

**10 CFR**  
 0..... 62880  
 2..... 65049, 67088  
 20..... 63515  
 21..... 63515  
 50..... 66575  
 70..... 68184  
 71..... 63083  
 73..... 63515, 65969, 67089, 68184  
 150..... 68184  
 211..... 63515, 66183  
 212..... 65722, 66186  
 436..... 64776, 65700  
 450..... 63519, 64797  
 455..... 63519, 64797  
 456..... 64602  
 465..... 66780  
 1023..... 64270  
**Proposed Rules:**  
 Ch. II..... 63108, 64094, 65274  
 Ch. III..... 63108, 64094, 65274  
 Ch. X..... 63108, 64094, 65274  
 51..... 65598  
 205..... 67338  
 211..... 67602  
 212..... 67602  
 221..... 63109  
 435..... 68120  
 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**  
 4..... 65379  
 5..... 65380  
 27..... 63084  
 28..... 65381  
 206..... 67961  
 215..... 67973  
 225..... 64398, 65051, 65731  
 262..... 64398  
 264b..... 64399

265..... 64398  
 329..... 66575  
 335..... 67627  
 541..... 67089  
 545..... 67089  
 720..... 65731  
**Proposed Rules:**  
 210..... 67995  
 211..... 62902, 62903  
 561..... 64840  
 563..... 65599

**13 CFR**  
 101..... 64401  
 121..... 67980  
 130..... 67980  
 540..... 67091

**14 CFR**  
 13..... 63720  
 39..... 62881, 62882, 63519-63521, 64797, 65387, 65732, 65733, 66188, 66189, 67101-67103, 67369  
 71..... 62883, 62884, 65388-65391, 65734, 66190, 67104, 67106, 67370-67373  
 73..... 67106, 67107  
 75..... 62884  
 91..... 62884  
 95..... 65391  
 97..... 62885, 66190  
 311..... 65583  
 322..... 65398  
 325..... 65399  
 385..... 64401  
 398..... 65583, 65584  
 399..... 65052

**Proposed Rules:**  
 Ch. I..... 65104  
 1..... 67136  
 23..... 62906  
 25..... 62906, 67137  
 27..... 67136  
 29..... 67136  
 33..... 67136  
 39..... 62907, 63547, 67139, 67435  
 43..... 66324, 67136  
 45..... 67136  
 61..... 65550, 67136  
 65..... 66324  
 71..... 62908, 63548, 63549, 64840-64842, 65403, 65768-65770, 66204, 66205, 67140, 67436  
 73..... 65403, 65770  
 91..... 66324, 67136  
 97..... 62909  
 107..... 63048, 64843  
 108..... 63048, 64843  
 121..... 63048, 64843, 65550, 66324, 67136  
 123..... 66324  
 125..... 66324  
 127..... 67136  
 129..... 63048, 64843  
 133..... 67136  
 135..... 62906, 63048, 64843, 66324, 67136  
 145..... 66324  
 223..... 64429  
 225..... 64429  
 233..... 66835  
 241..... 67140

296..... 65599  
 302..... 66835

**15 CFR**  
 369..... 67374  
**Proposed Rules:**  
 503..... 65940

**16 CFR**  
 3..... 62087  
 13..... 64803, 65735, 66576, 67643, 67644, 67981  
 305..... 66466  
 460..... 64402  
 802..... 66781  
**Proposed Rules:**  
 13..... 63114, 63550, 64432, 64434, 67436  
 433..... 65771, 68000  
 451..... 65599  
 454..... 62911  
 1700..... 67438

**17 CFR**  
 1..... 65970  
 140..... 65735  
 145..... 65970  
 147..... 65970  
 200..... 64069, 65736  
 210..... 62888, 65738  
 230..... 64070  
 240..... 67107  
 249..... 65739  
**Proposed Rules:**  
 210..... 65774  
 229..... 67143  
 230..... 67143, 67671  
 239..... 67143, 67671  
 240..... 66607, 67143  
 249..... 67143  
 250..... 62912  
 259..... 62912  
 270..... 66608, 66612, 67150, 67152

**18 CFR**  
 2..... 65055, 67644  
 4..... 67644  
 16..... 67644  
 35..... 65740  
 141..... 65741  
 154..... 65740  
 157..... 65055  
 260..... 65741  
 270..... 66577  
 271..... 62889, 66783, 67108  
 272..... 66192, 66786, 67655  
 273..... 66786  
 274..... 67108  
 275..... 66786  
 281..... 65585  
 282..... 67982  
 284..... 66789  
 292..... 63114, 65744  
**Proposed Rules:**

2..... 66613  
 35..... 67154, 67158  
 46..... 66205  
 154..... 66613  
 270..... 66613  
 277..... 66208  
 280..... 67166  
 282..... 67170  
 284..... 67166  
 292..... 67176

<b>19 CFR</b>	232.....64073	871.....63737, 65407	21.....65083, 65996, 66623, 67179, 67181
Proposed Rules:	234.....64073	872.....63737, 65407	36.....65997
4.....64434, 66835	235.....64073	873.....63737, 65407	<b>39 CFR</b>
144.....64434, 66835	236.....64073	874.....63737, 65407	10.....65986
151.....64434, 66835	241.....64073	875.....63737, 65407	775.....63524
159.....64434, 66835	242.....64073	876.....63737, 65407	952.....65399
<b>20 CFR</b>	244.....64073	877.....63737, 65407	<b>40 CFR</b>
416.....64402	250.....64073	878.....63737, 65407	6.....64174
675.....64290, 64326	570.....65950, 67656	879.....63737, 65407	51.....65066, 65069
684.....64290	805.....64204	880.....63737, 65407	52.....63102, 65066, 67375
688.....64326	841.....64405, 67656	881.....63737, 65407	53.....65066
Proposed Rules:	868.....64196	882.....63737, 65407	55.....67986
Ch. I.....65556	880.....65060	883.....63737, 65407	58.....65066, 65069
Ch. IV.....65556	882.....65061, 65360	884.....63737, 65407	60.....65066
Ch. V.....65556	888.....65924	885.....63737, 65407	61.....65399
Ch. VI.....65556	3280.....66194	886.....63737, 65407	65.....63102, 67658
Ch. VII.....65556	4103.....66587	887.....63737, 65407	80.....62897
208.....62912	Proposed Rules:	888.....63737, 65407	81.....63102, 64078, 65751, 65986, 67380
260.....62912, 63096	115.....65775	<b>31 CFR</b>	87.....64266
416.....66836	203.....65776	535.....65956, 65988, 66590, 66832, 67617	116.....65400, 66602
614.....65406	204.....65776	<b>32 CFR</b>	117.....65401, 66602
<b>21 CFR</b>	208.....65081, 66846	Ch. XXVIII.....66591	162.....63749
73.....65974	402.....65992	625.....63099	180.....67115-67117
431.....67112	571.....65776	706.....67114	205.....67659
510.....65975, 67113	881.....67177	724.....66801	227.....65751
514.....67112	883.....65776	806b.....66816	256.....66196
520.....63096, 65975, 65976, 67113	886.....64095	881.....64075	409.....64078
522.....63097, 65975, 67113	888.....67177	2600.....64077	418.....64080
526.....67113	3282.....67440	Proposed Rules:	424.....64082
540.....65976	<b>25 CFR</b>	169.....65601	434.....64082
558.....65976, 66581, 67113	31a.....67040	169a.....65601	Proposed Rules:
1002.....65352, 67655	31b.....67040	169b.....65601	Ch. I.....63552, 65601, 65612- 65614, 65615, 65616, 65617, 65618, 65619, 65620, 65621, 65622, 65623, 65624, 65625, 65626, 65627, 65628, 65629, 65630, 65631, 65632, 65633, 65634, 65635, 65636, 65637, 65638, 65639, 65640, 65641, 65642, 65643, 65644, 65645, 65646, 65647, 65648, 65649, 65650, 65651, 65652, 65653, 65654, 65655, 65656, 65657, 65658, 65659, 65660, 65661, 65662, 65663, 65664, 65665, 65666, 65667, 65668, 65669, 65670, 65671, 65672, 65673, 65674, 65675
1040.....65352, 67655	31g.....65008	1900.....65780	51.....65084, 67675
Proposed Rules:	32b.....67040	<b>32A CFR</b>	52.....63114, 64439, 65084, 65408, 65613, 65614, 65781, 65790, 65791, 66214, 67182, 67674, 67675
Ch. I.....67673	256.....65747	Proposed Rules:	60.....62914, 67934, 67938
145.....65080	700.....65750	601-662.....66846	65.....65410, 65411, 65615, 66624, 66849, 67183
331.....65992	<b>26 CFR</b>	<b>33 CFR</b>	81.....65791, 66850
338.....65992	1.....64405, 65061, 67657	117.....65750, 66195	85.....62915
340.....65992	5.....63522	124.....63672	87.....66850
353.....63270	Proposed Rules:	126.....63672	120.....67442
864.....64095	1.....65777, 67178	157.....66502	180.....66216, 66217
868.....63292-63426, 65081	31.....65777, 65995	160.....62891	230.....63552
880.....65992	48.....67441	161.....63672	250.....67445
1000.....66616	139.....67441	164.....63672, 66528	257.....65615
<b>22 CFR</b>	<b>28 CFR</b>	183.....63523	713.....64844, 67183
506.....63098	Proposed Rules:	206.....65977	774.....67183
Proposed Rules:	42.....67179	207.....67657	761.....66851
51.....65600	<b>29 CFR</b>	Proposed Rules:	<b>41 CFR</b>
161.....66838	1625.....66791	82.....64843	14-1.....63529
<b>23 CFR</b>	1627.....66791	204.....66213	14-7.....63529
650.....67578	Proposed Rules:	<b>36 CFR</b>	15-7.....65587
658.....63680	Subtitle A.....65556	Ch. VI.....64406	105-54.....65071
770.....66193	Ch. II.....65566	51.....62893	105-62.....64805
Proposed Rules:	Ch. IV.....65566	60.....64405	Proposed Rules:
659.....63682	Ch. V.....65566	219.....65587	Ch. 4.....65862
771.....66213	Ch. XVII.....65566	222.....64406	3-1.....63115, 67183, 67185
<b>24 CFR</b>	Ch. XXV.....65566	1202.....64407, 65066	3-7.....63115, 67185
Ch. II.....67375	1440.....65407	1212.....66599	9-1.....67330
Ch. XXV.....66582	1601.....65082	Proposed Rules:	9-3.....67330
50.....67906	1904.....65082	Ch. II.....65862	9-16.....67330
200.....67982	1910.....64095, 66621	7.....67441	9-50.....67330
201.....64072	<b>30 CFR</b>	<b>37 CFR</b>	101-6.....66852
203.....64073	Ch. VII.....67942	Proposed Rules:	101-39.....65411
205.....64073, 64403	788.....66195	202.....62913	<b>42 CFR</b>
207.....64073, 65580	872.....67057	<b>38 CFR</b>	50.....65072
213.....64073	Proposed Rules:	Proposed Rules:	
220.....64073	Ch. I.....65566	8.....65995	
221.....64073	Ch. VII.....65601		
	870.....63737, 65407		

405.....	67381
<b>Proposed Rules:</b>	
4.....	66852
34.....	64095
59a.....	66852
63.....	66852
64.....	66852
72.....	66853
435.....	66855
436.....	66855

<b>43 CFR</b>	
3100.....	64085
<b>Proposed Rules:</b>	
3210.....	67598
3211.....	67598
<b>Public Land Orders:</b>	
4520 [Revoked by PLO 5685].....	66196
5685.....	66196
5680 [Corrected by 5686].....	66816
5686.....	66816
5687.....	67383

<b>44 CFR</b>	
55.....	64082
64.....	63529, 64808, 65752
65.....	63530, 66602, 67126, 67129
67.....	63531-63534, 64421, 65074
205.....	64809
<b>Proposed Rules:</b>	
67.....	63117-63120, 63553- 63557, 64096, 64444, 64451, 64460, 64466, 64472, 65093- 65104, 66857, 67186, 68000
205.....	63058

<b>45 CFR</b>	
185a.....	67384
205.....	67421
1067.....	67423
2101.....	67050
2102.....	67050
2103.....	67050
<b>Proposed Rules:</b>	
Ch. X.....	65412
86.....	66626
405.....	63120
1152.....	63120
1210.....	65999
1211.....	66003
1501.....	64097
1067.....	64815
1069.....	64836

<b>46 CFR</b>	
30.....	66500
32.....	66500
34.....	66500
401.....	64836
402.....	64836
502.....	62898
504.....	67660
505.....	67660
<b>Proposed Rules:</b>	
1.....	64844
61.....	62915, 66218
254.....	65616
512.....	65417
514.....	65417

<b>47 CFR</b>	
13.....	66816
15.....	66822
21.....	63105
22.....	63105
25.....	65753, 67663
31.....	65761
61.....	66823
68.....	66825
73.....	64408, 65763, 66816, 67664-67669
74.....	65763, 66816
83.....	64409, 66830
87.....	64409
90.....	67117, 67119
91.....	66830
95.....	67125

<b>Proposed Rules:</b>	
2.....	67191
21.....	67191
31.....	64440
33.....	64440
42.....	64440
43.....	64440, 67192
61.....	67445
63.....	67445
64.....	63558
73.....	62917, 64441, 67680
81.....	66857
87.....	67191
90.....	64442, 67191
95.....	67191
97.....	64442

<b>49 CFR</b>	
7.....	65765
178.....	66197
571.....	65766
601.....	65765
1008.....	66831
1033.....	62899, 63105, 64410, 65075, 65400, 65767, 67989
1034.....	65075
1047.....	65588
1064.....	65987
1201.....	65401, 67424
1240.....	65401
1241.....	65401

<b>Proposed Rules:</b>	
Ch. X.....	64845, 65420
171.....	67476
172.....	65020, 66219
173.....	67476
192.....	65792
173.....	65020
213.....	64844
385.....	67193
662.....	66213
666.....	62918
1001.....	64846
1011.....	64846
1047.....	67476
1056.....	63121
1100.....	64846
1111.....	66626
1131.....	64846
1131a.....	64846
1301.....	63121, 64851

<b>50 CFR</b>	
17.....	64246, 64247, 64250, 64730, 64736, 64738, 64741, 64744, 65002
32.....	63106, 67670
33.....	62899

285.....	62900
611.....	64410, 64421, 65590
672.....	64410, 64421
<b>Proposed Rules:</b>	
Ch. VI.....	63558, 65616
17.....	63474, 67902
32.....	63496
216.....	67194
410.....	64097
611.....	66356
652.....	65372
661.....	64443
662.....	67194
675.....	66356
676.....	66859, 68001

## 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

## INTERIOR DEPARTMENT

## Fish and Wildlife Service—

- 61910 10-26-79 / Determination that *Arctostaphylos hookeri* ssp. *ravenii* is an endangered species
- 61916 10-26-79 / Determination that *Echinocereus iloydii* is an endangered species
- 61918 10-26-79 / Determination that *Echinocereus veichenbachii* var. *albertii* is an endangered species
- 61927 10-26-79 / Determination that *Echinocactus horizontalis* var. *nicholii* is an endangered species
- 61912 10-26-79 / Determination that *Mirabilis macfarlanei* is an endangered species
- 62244 10-29-79 / Determination that *Pediocactus knowltonii* is an endangered species
- 61922 10-26-79 / Determination that *Pediocactus peeblesianus* var. *peeblesianus* is an endangered species

## Next Week's Deadlines for Comments On Proposed Rules

## COMMERCE DEPARTMENT

## National Oceanic and Atmospheric Administration—

- 64097 11-6-79 / Fish and Wildlife Coordination Act; uniform procedures for Federal Agency compliance; comments by 12-6-79

## ENVIRONMENTAL PROTECTION AGENCY

- 63552 11-5-79 / Clean Air Act; additional modeling data; comments by 12-5-79

[Originally published at 44 FR 29495, May 21, 1979]

- 57362 10-4-79 / Fuel economy labeling requirements for 1981 and later model year automobiles; gas guzzler tax statement; comments by 12-3-79

- 64439 11-7-79 / Proposed revision of the West Virginia State implementation plan; comments by 12-7-79

## FEDERAL COMMUNICATIONS COMMISSION

- 64442 11-7-79 / Designating frequencies in the 806-821 and 851-866 MHz bands for slow growth land mobile radio systems of utilities and public safety agencies; comments by 12-3-79

[See also 44 FR 50876, Aug. 30, 1979]

- 59568 10-16-79 / Ex parte communications; reply comments by 12-4-79

- 58763 10-11-79 / FM broadcast station in Warrensburg, Mo.; changes in table of assignments; comments by 12-3-79

- 59580 10-10-79 / FM broadcast station in Plainview, Tex.; comments extended to 12-4-79

[Originally published at 44 FR 47964, Aug. 16, 1979]

- 62305 10-30-79 / Freedom of Information rules; modified fees for records searches; comments by 12-6-79

- 51263 8-31-79 / Multiple licensing of land mobile radio systems in bands 806-812 and 851-866 MHz; reply comments by 12-5-79

- 59570 10-16-79 / Providing for the operation of a TV interface device; reply comments by 12-8-79

- 63558 11-5-79 / Second computer inquiry; furnishing of computer processing services; reply comments by 12-7-79

[Originally published at 44 FR 47961, Aug. 16, 1979]

## FEDERAL ELECTION COMMISSION

- 63753 11-5-79 / Presidential Primary Matching Fund; comments by 12-5-79

## HEALTH, EDUCATION, AND WELFARE DEPARTMENT

## Health Resources Administration—

- 60342 10-19-79 / National Guidelines for Health Planning; draft regulations; comments by 12-3-79

## HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

- 56927 10-3-79 / Multifamily housing mortgage insurance; special eligibility provisions for existing projects in target preservation areas; comments by 12-3-79  
**INTERIOR DEPARTMENT**  
Office of the Secretary—
- 64097 11-8-79 / Fish and Wildlife Coordination Act; uniform procedures for Federal agency compliance; comments by 12-6-79  
**JUSTICE DEPARTMENT**  
Immigration and Naturalization Service—
- 56368 10-1-79 / Proposed revisions to service fee schedule; comments by 12-3-79  
**MANAGEMENT AND BUDGET OFFICE**  
Federal Procurement Policy Office—
- 55912 9-28-79 / Draft Federal Acquisition Regulation; comments by 12-5-79  
**NATIONAL SCIENCE FOUNDATION**
- 57127 10-4-79 / Nondiscrimination on basis of age in programs or activities receiving Federal financial assistance; comments by 12-3-79  
**RAILROAD RETIREMENT BOARD**
- 62912 11-1-79 / Miscellaneous amendments and expanded procedure for notification to claimants annuitants and payees of annuities of initial decisions by its Bureau of Retirement Claims; comments by 12-3-79  
**SECURITIES AND EXCHANGE COMMISSION**
- 54014 9-17-79 / Bearing of distribution expenses by mutual funds; comments by 12-7-79  
**TRANSPORTATION DEPARTMENT**  
Federal Aviation Administration—
- 56370 10-1-79 / Technical Standard Orders Revision Program; comments by 12-3-79  
National Highway Traffic Safety Administration—
- 60120 10-18-79 / Heavy duty vehicle brake systems; comments by 12-3-79  
**TREASURY DEPARTMENT**  
Customs Service—
- 64434 11-7-79 / Public gaugers of imported petroleum and petroleum products; Proposed amendments; comments by 12-7-79  
Internal Revenue Service—
- 57423 10-5-79 / Income Tax; Reasonable Funding Methods; comments by 12-4-79
- 57391 10-5-79 / Income Tax Rules; Requirements Relating to certain exchanges involving a foreign corporation for a certain tax year; comments by 12-4-79
- Next Week's Meetings**
- AGRICULTURE DEPARTMENT**  
Federal Grain Inspection Service—
- 64853 11-8-79 / Grain Standards Act Advisory Committee, Washington, D.C. (open), 12-5-79  
Food and Nutrition Service—
- 66009 11-16-79 / National Advisory Council on Maternal, Infant and Fetal Nutrition, Albuquerque, N. Mex. (open), 12-2-79  
Forest Service—
- 65617 11-14-79 / Lincoln National Forest Grazing Advisory Board, Alamogordo, N. Mex. (open), 12-6-79  
Office of the Secretary—
- 61237 10-24-79 / Structure of Agriculture, Sedalia, Mo. (open), 12-5-79
- 61237 10-24-79 / Structure of Agriculture, South Sioux City, Nebr. (open), 12-4-79
- 61237 10-24-79 / Structure of Agriculture, Wichita Falls, Tex. (open), 12-6-79  
Science and Education Administration—
- 66645 11-20-79 / Committee of Nine, Oklahoma City, Okla. (open), 12-4 and 12-5-79
- 65113 11-9-79 / National Plant Genetics Resources Board, Mexico City, Mexico (open), 12-3 through 12-7-79  
**ARTS AND HUMANITIES NATIONAL FOUNDATION**
- 66713 11-20-79 / Humanities Panel, Washington, D.C. (closed), 12-6 and 12-7-79
- 65686 11-14-79 / Media Arts Panel, Washington, D.C. (closed), 12-3 and 12-4-79
- 65494 11-13-79 / Music Panel (Orchestra Section), Washington, D.C. (partially open), 12-3 through 12-6-79
- 66113 11-16-79 / Special Projects Panel, Washington, D.C. (closed), 12-6 and 12-7-79
- 66266 11-19-79 / Special Projects Panel (Folk Arts Section), Washington, D.C. (partially open), 12-6 through 12-8-79
- 65494 11-13-79 / Visual Arts Panel (Artists Spaces), Washington, D.C. (closed), 12-3 and 12-5-79
- 65494 11-13-79 / Visual Arts Panel (Photography Surveys), Washington, D.C. (closed), 12-4 and 12-5-79  
**CIVIL RIGHTS COMMISSION**
- 66862 11-21-79 / Idaho Advisory Committee, Twin Falls, Idaho (open), 12-8-79
- 65115 11-9-79 / New Jersey Advisory Committee, New York, N.Y. (open), 12-4-79
- 65802 11-15-79 / Tennessee Advisory Committee, Knoxville, Tenn. (open), 12-7-79
- 65619 11-14-79 / Wyoming Advisory Committee, Casper, Wyo. (open), 12-8-79  
**COMMERCE DEPARTMENT**  
Industry and Trade Administration—
- 65619 11-14-79 / Executive Committee of the President's Export Council, Washington, D.C. (open), 12-6-79
- 66009 11-16-79 / Export Promotion Subcommittee of the President's Export Council, Washington, D.C. (open), 12-5-79  
National Oceanic and Atmospheric Administration—
- 65428 11-13-79 / Mid-Atlantic Fishery Management Council, Scientific and Statistical Committee, Philadelphia, Pa. (open), 12-3-79  
**DEFENSE DEPARTMENT**  
Army Department—
- 64884 11-8-79 / U.S. Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Bacterial Diseases, Washington, D.C. (partially open), 12-3 and 12-4-79  
Navy Department—
- 64865 11-8-79 / Board of Advisors to the President, Naval War College (open), 12-6 and 12-7-79
- 65622 11-14-79 / Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, Calif., 12-6 and 12-7-79  
Office of the Secretary—
- 65430 11-13-79 / Electron Devices Advisory Group, Working Group A, Washington, D.C. (closed), 12-5 and 12-6-79
- 63431 11-13-79 / Electron Devices Advisory Group, Washington, D.C. (closed), 12-7-79
- 63431 11-13-79 / Electron Devices Advisory Group, Working Group C, Washington, D.C. (closed), 12-6-79
- 63430 11-13-79 / Electron Devices Advisory Group, Working Group B, Arlington, Va. (closed), 12-6-79
- 65812 11-15-79 / Evaluation of audit, inspection and investigative components of the Department of Defense Task Force, Washington, D.C. (open), 12-3-79

- 60368 10-19-79 / Wage Committee, Washington, D.C. (closed), 12-4-79  
EMPLOYMENT POLICY NATIONAL COMMISSION
- 66112 11-16-79 / Washington, D.C. (open), 12-7-79  
ENERGY DEPARTMENT
- 66013 11-16-79 / Public scoping meeting on environmental impact of proposed Clean Pipeline Gas Demonstration Plant in Noble County, Ohio; Caldwell, Ohio (open), 12-4-79  
Conservation and Solar Energy Office—
- 65812 11-15-79 / Food Industry Advisory Committee and Subcommittees, Dallas, Tex. (open), 12-4-79  
Economic Regulatory Administration—
- 66021 11-16-79 / Gasoline Marketing Advisory Committee, Atlanta, Ga. (open), 12-5-79  
EXECUTIVE OFFICE OF THE PRESIDENT  
Administration Office—
- 63478 11-13-79 / Personnel Advisory Committee, Washington, D.C. (open), 12-7-79  
FEDERAL MEDIATION AND CONCILIATION SERVICE
- 65183 11-9-79 / Arbitration Services Advisory Committee, Washington, D.C. (open), 12-6 and 12-7-79  
HEALTH, EDUCATION, AND WELFARE DEPARTMENT  
Alcohol, Drug Abuse and Mental Health Administration—
- 65818 11-15-79 / Mental Health National Advisory Council, Rockville, Md. (open), 12-6 and 12-7-79
- 66687 11-20-79 / Minority Advisory Committee, Rockville, Md. (open), 12-3 through 12-5-79  
Disease Control Center—
- 66687 11-20-79 / Working Group for Second International Conference on Nosocomial Infections, Atlanta, Ga. (open), 12-3-79  
Education Office—
- 66252 11-19-79 / Adult Education National Advisory Council, Washington, D.C. (open), 12-6 through 12-8-79
- 65482 11-13-79 / Indian Education National Advisory Council, Denver, Colo. (open), 11-30 and 12-1-79
- 66693 11-20-79 / National Advisory Council on the Education of Disadvantaged Children, Washington, D.C. (open and closed), 12-6 and 12-7-79
- 66071 11-16-79 / National Advisory Council on Extension and Continuing Education, Tucson, Ariz. (open), 12-4 through 12-7-79  
Food and Drug Administration—
- 65479 11-13-79 / Anti-Thymocyte Globulin Workshop, Bethesda, Md. (open), 12-6-79
- 66687 11-20-79 / Pulmonary-Allergy Drugs Advisory Committee, Rockville, Md. (open and closed), 12-6 and 12-7-79  
National Institutes of Health—
- 66070 11-16-79 / Advisory Committee to the Director, NIH, Bethesda, Md. (open), 12-4 and 12-5-79
- 61459 10-25-79 / Aging Review Committee, Bethesda, Md. (partially open), 12-3 and 12-4-79
- 59653 10-16-79 / Arthritis National Advisory Board, Bethesda, Md. (open), 12-6-79
- 65481 11-13-79 / Bladder and Prostatic Cancer Review Committee (Bladder Subcommittee), Bethesda, Md. (partially open), 12-6 and 12-7-79
- 66071 11-16-79 / Board of Scientific Counselors, NICHD, Bethesda, Md. (partially open), 12-3-79
- 62954 11-1-79 / Board of Scientific Counselors of the National Eye Institute, Bethesda, Md. (partially open), 12-3 and 12-4-79
- 62955 11-1-79 / Chemical Selection Subgroup of the Clearinghouse on Environmental Carcinogens, Bethesda, Md. (open), 12-3-79
- 65480 11-13-79 / Clinical Trials Review Committee, Chicago, Ill. (partially open), 12-4 and 12-5-79
- 65480 11-13-79 / Clinical Trials Review Committee, Tampa, Fla. (partially open), 12-5 and 12-6-79
- 59653 10-16-79 / Diabetes National Advisory Board, (open), 12-4 and 12-5-79
- 61460 10-25-79 / General Research Support Review Committee, Bethesda, Md. (partially open), 12-3 through 12-5-79
- 65482 11-13-79 / Indian Education National Advisory Council, Denver, Colo. (open), 12-2-79
- 65480 11-13-79 / International Program for the Evaluation of Short-Term tests for Carcinogenicity, Bethesda, Md. (open), 12-3-79
- 65481 11-13-79 / Large Bowel and Pancreatic Cancer Review Committee, Large Bowel Subcommittee, Bethesda, Md. (partially open), 12-6 and 12-7-79
- 61461 10-25-79 / Mental Retardation Research Committee, Bethesda, Md. (partially open), 12-4 and 12-5-79
- 66071 11-16-79 / National Arthritis Advisory Board, Bethesda, Md. (open), 12-5 and 12-6-79
- 63074 11-1-79 / Recombinant DNA Advisory Committee, Bethesda, Md. (partially open), 12-6 and 12-7-79
- 61462 10-25-79 / Workshop on Criteria for Selection, Preparation, and Characterization of Mineral Samples for Biological Testing, Bethesda, Md. (open), 12-6-79  
Office of Assistant Secretary for Health—
- 65675 11-14-79 / President's Council on Physical Fitness and Sports, Washington, D.C. (open), 12-6-79  
Office of the Secretary—
- 65675 11-14-79 / Secretary's Advisory Committee on the Rights and Responsibilities of Women, Washington, D.C., 12-3-79
- 60415 10-19-79 / White House Conference on Families, Detroit, Mich., 12-7 and 12-8-79
- 65818 11-15-79 / Women, Rights and Responsibilities, Secretary's Advisory Committee, Washington, D.C. (open), 12-5-79  
INTERIOR DEPARTMENT  
Land Management Bureau—
- 62085 10-29-79 / Grazing Advisory Board, Grand Junction, Colo. (open), 12-6-79
- 66257 11-19-79 / Proposed Leasing of Federal Coal in the Uinta-Southwestern Utah Coal Production Region, Escalante, Utah, 12-3-79; Richfield, Utah, 12-4-79; Price, Utah, 12-5-79; Salt Lake City, Utah (open), 12-6-79
- 64918 11-8-79 / Roswell District Grazing Advisory Board, Roswell District Office, N. Mex. (open), 12-8-79
- 61262 10-24-79 / Winnemucca District Grazing Advisory Board, Winnemucca, Nev. (open), 12-8-79  
National Park Service—
- 65821 11-15-79 / Golden Gate National Recreation Area Advisory Commission, San Francisco, Calif. (open), 12-8-79
- 63158 11-22-79 / Gulf Islands National Seashore Advisory Commission, Gulf Breeze, Fla. (open with restrictions), 12-7-79  
Office of the Secretary—
- 65684 11-14-79 / Oil Shale Environmental Advisory Panel, Salt Lake City, Utah (open), 12-4-79
- 62968 11-1-79 / Outer Continental Shelf Advisory Board—Policy Committee, Scientific Committee and Regional Technical Working Groups, Norfolk, Va. (open), 12-5 through 12-7-79  
Reclamation Bureau—

- 65483 11-13-79 / Colorado River Basin Salinity Control Advisory Council, Denver, Colo. (open), 12-4-79
- JUSTICE DEPARTMENT**
- Law Enforcement Assistance Administration—
- 65686 11-14-79 / National Minority Advisory Council on Criminal Justice, San Francisco, Calif. (open), 12-7 and 12-8-79
- National Institute of Corrections—
- 57523 10-5-79 / Advisory Board, Atlanta, Ga. (open), 12-4 and 12-5-79
- LABOR DEPARTMENT**
- Labor Statistics Bureau—
- 63164 11-2-79 / Labor Research Advisory Council Committees, Washington, D.C. (open), 12-4, 12-5, and 12-6-79
- Occupational Safety and Health Administration—
- 66706 11-20-79 / National Advisory Committee on Occupational Safety and Health, Washington, D.C. (open), 12-6 and 12-7-79
- NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**
- 66712 11-20-79 / Aeronautics Advisory Committee, Subcommittee on Aviation Safety Reporting System, Washington, D.C. (open), 12-4 and 12-5-79
- 65112 11-16-79 / National Advisory Council (NAC) Space Systems, and Technology Advisory Committee, Cleveland, Ohio (open), 12-4 and 12-5-79
- 66712 11-20-79 / Space and Terrestrial Applications Advisory Committee, Washington, D.C. (partially open), 12-5 and 12-6-79
- 66713 11-20-79 / Space and Terrestrial Applications Advisory Committee, Washington, D.C. (open), 12-7-79
- NUCLEAR REGULATORY COMMISSION**
- 66715 11-20-79 / Advisory Committee on Reactor Safeguards, Fire Protection Subcommittee, Washington, D.C. (open), 12-5-79
- 66715 11-20-79 / Advisory Committee on Reactor Safeguards, Procedures and Administration Subcommittee, Washington, D.C. (open), 12-5-79
- 66715 11-20-79 / Advisory Committee on Reactor Safeguards, Reliability and Probabilistic Assessment Subcommittee, Washington, D.C. (partially open), 12-5-79
- 66113 11-16-79 / Advisory Committee on Reactor Safeguards Subcommittee on Reactor Operations, Washington, D.C. (partially open), 12-3-79
- 66266 11-19-79 / Three Mile Island, Unit 2 accident implications re nuclear power plant design advisory committee, Washington, D.C. (open), 12-4-79
- PRESIDENT'S MANAGEMENT IMPROVEMENT COUNCIL**
- 66115 11-16-79 / Review and discussion of management improvement projects, Washington, D.C. (closed), 12-3-79
- SOCIAL SECURITY, NATIONAL COMMISSION**
- 66113 11-16-79 / Discussion of Commission's Interim Report, Washington, D.C. (open), 12-7 through 12-8-79
- STATE DEPARTMENT**
- 66116 11-16-79 / International Intellectual Property Advisory Committee, Washington, D.C. (open), 12-4-79
- TRANSPORTATION DEPARTMENT**
- Federal Aviation Administration—
- 65513 11-13-79 / Radio Technical Commission for Aeronautics, Special Committee 139—Airborne Equipment Standards for Microwave Landing System, Washington, D.C. (open), 12-5 through 12-7-79
- 34235 National Highway Traffic Safety Administration—  
6-14-79 / National Conference on Child Passenger Protection, Reston, Va. (open), 12-3 through 12-5-79
- VETERANS ADMINISTRATION**
- 65230 11-9-79 / Administrator's Education and Rehabilitation Advisory Committee, Washington, D.C. (open), 12-5-79
- WAGE AND PRICE STABILITY COUNCIL**
- 66235 11-19-79 / Pay Advisory Committee, Washington, D.C. (open), 12-7-79
- Next Week's Public Hearings**
- AGRICULTURE DEPARTMENT**
- Food and Nutrition Service—
- 63107 11-2-79 / School Nutrition Programs, Atlanta, Ga., 12-4-79
- COMMERCE DEPARTMENT**
- National Oceanic and Atmospheric Administration—
- 64443 11-7-79 / Gulf of Mexico Fishery Management Council, Biloxi, Miss., 12-6-79
- 64443 11-7-79 / Gulf of Mexico Fishery Management Council, Foley, Ala. and Bayou LaBatre, Ala., 12-5-79
- DEFENSE DEPARTMENT**
- Navy Department—
- 65623 11-14-79 / Naval Discharge Review Board, Salt Lake City, Utah; San Diego, Calif.; San Francisco, Calif., 12-2 through 12-8-79
- ENERGY DEPARTMENT**
- Economic Regulatory Administration—
- 62848 10-31-79 / Crude oil reseller regulations, Houston, Tex., 12-6-79
- 63109 11-2-79 / Priority supply of crude oil and petroleum products under the Defense Production Act, Washington, D.C., 12-6-79
- 60236 10-18-79 / Voluntary guideline for solar energy and renewable resources implementing standards of the Public Utility Regulatory Policies Act of 1978, Washington, D.C., 12-4-79
- Federal Energy Regulatory Commission—
- 66192 11-19-79 / Interim rules involving high-cost natural gas, Washington, D.C., 12-4-79
- 61977 10-29-79 / Small power production and cogeneration rates and exemptions, Washington, D.C., 12-4-79
- ENVIRONMENTAL PROTECTION AGENCY**
- 59565 10-16-79 / Water quality standards; Navigable Waters of the State of North Carolina, Plymouth, N.C., 12-6-79
- HEALTH, EDUCATION, AND WELFARE DEPARTMENT**
- Office of the Secretary—
- 56029 9-28-79 / White House Conference on Families, Detroit, Mich., 12-7 and 12-8-79
- 66696 11-20-79 / White House Conference on Families, national hearing, Detroit, Mich., 12-7-79
- 66696 11-20-79 / White House Conference on Families, national hearing, Oak Park, Mich., 12-8-79
- LABOR DEPARTMENT**
- Pension and Welfare Benefit Programs Office—
- 61694 10-26-79 / Proposed class exemption for certain transactions involving bank collective investment funds, Washington, D.C., 12-3-79
- SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY**
- 65688 11-14-79 / Regional hearing, Boulevard, Miami, 12-4-79

**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 6, 1979]

**Documents Relating to Federal Grant Programs**

This is a list of documents relating to Federal grant programs which were published in the Federal Register during the previous week.

**RULES GOING INTO EFFECT**

67040 11-21-79 / Interior / BIA—Grants for tribally controlled community colleges and Navajo Community College; effective 11-21-79

**DEADLINES FOR COMMENTS ON PROPOSED RULES**

67130 11-23-79 / Agriculture/AMS—Oranges and grapefruit grown in Tex.; comments by 12-7-79

**APPLICATIONS DEADLINES**

66253 11-19-79 / HEW/OE—Bilingual education; desegregation programs; apply 1-11-80

66253 11-19-79 / HEW/OE—Bilingual education; elementary and secondary program; apply by 1-11-80

66255 11-19-79 / HEW/OE—Bilingual education; fellowship program; apply by 2-15-80

66254 11-19-79 / HEW/OE—Bilingual education; training program; apply by 1-11-80

66694 11-20-79 / HEW/OE—Domestic mining and mineral fuel conservation fellowship program; apply by 1-8-80

66695 11-20-79 / HEW/OE—Public Service Education Program, apply by 1-8-80

**MEETINGS**

67250 11-23-79 / NFAH/—Museum Panel, Washington, D.C. (closed), 12-11-79

66266 11-19-79 / NFAH—Special Projects Panel (Folk Arts Section), Washington, D.C. (partially open), 12-6 through 12-8-79

**OTHER ITEMS OF INTEREST**

67250 11-23-79 / LSC—Grants and Contracts, Minnesota; comments solicited

66712 11-20-79 / LSC—Legal Assistance of North Dakota, Bismarck, N. Dak., grant to serve native Americans on Turtle Mtn. and Devils Lake Reservations; comments on application solicited



11-28-79  
Vol. 44—No. 230  
BOOK 2:  
PAGES  
68201-68450

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Book 2 of 2 Books  
Wednesday, November 28, 1979

11-28-79  
Vol. 44—No. 230  
BOOK 2:  
PAGES  
68201-68450

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Part IV

**United States  
Regulatory Council**

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Calendar of Federal Regulations

## UNITED STATES REGULATORY COUNCIL

### Calendar of Federal Regulations

**AGENCY:** The United States Regulatory Council.

**ACTION:** Calendar of Federal Regulations.

**SUMMARY:** The United States Regulatory Council publishes the Calendar of Federal Regulations in order to provide a comprehensive catalog of important Federal regulations under development by participating agencies. This is the second edition. Starting with this edition, we will publish the Calendar every six months, in November and May.

Special indices and appendices to the Calendar help readers to determine quickly which entries might be of most interest to them; others help readers to understand the requirements for public participation in the rulemaking process at each Council department and agency.

The Calendar is designed to provide, in one place, a concise summary of important regulations under development. It provides a useful tool to increase public awareness of and participation in the regulatory process.

**ADDRESS:** United States Regulatory Council, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:**

For information about specific regulations, please refer to the "Agency Contact" listed at the end of each entry.

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**SUPPLEMENTARY INFORMATION:** The President directed the creation of the United States Regulatory Council on October 31, 1978. It is composed of 36 departments and agencies with significant regulatory responsibilities.

The Council's principal assignments are to ensure better coordination of Federal regulatory activities and to seek ways to improve the management of the regulatory process.

In working together to improve the overall management of the regulatory process and to coordinate regulatory action, the Regulatory Council agencies are seeking to do a better job of

achieving the goals of regulation in the most cost effective way.

In its first year the Council has, under the President's direction:

- produced and published the first *Calendar of Federal Regulations* (44 FR 11388; February 28, 1979) and will publish a new edition every six months (Weekly Compilation of Presidential Documents, Week of November 6, 1978; *President Carter's Message to Congress Establishing the Regulatory Council*);
- developed and adopted the first government-wide policy on the control of cancer-causing chemicals (44 FR 60038; November 17, 1979; *Statement on Regulation of Chemical Carcinogens*);
- begun to implement (with the Small Business Administration and the Office of Management and Budget) a national policy of developing all new regulations in ways that recognize the special problems of small businesses and other small organizations (Weekly Compilation of Presidential Documents, Week of November 19, 1979; *Regulatory Programs and Small Businesses and Organizations*);
- established a process for the heads of all agencies that regulate or otherwise significantly affect the Automobile industry to jointly plan and coordinate major actions affecting that industry (Committee on Automobile Regulation);
- begun, with top-level State and Federal officials, to remove the most serious causes for complaint from the coal industry, including overlapping paperwork, inconsistent inspection practices, and duplicative permitting requirements.
- launched a government-wide effort to develop and implement innovative, more cost effective ways to achieve the goals of regulation.

Other Council activities underway: an effort to identify and lessen inconsistent or duplicative Federal, State and local regulations on hospitals, an assessment of the economic impact of regulation on the non-ferrous metals industry, a project to improve the quality of economic analysis undertaken by Council agencies, and action to coordinate the regulation of specific chemicals or products (e.g., formaldehyde, wood preservatives).

The Calendar of Federal Regulations is an important new tool for the President, the Congress, the regulators, and the public to understand and shape the way we implement national regulatory policy goals. This Calendar is also the first comprehensive and continuously up-dated catalog of important Federal regulations under

development. With the Calendar, and the semi-annual regulatory agendas now published by each agency under President Carter's Executive Order on Improving Government Regulation (E.O. 12044), most of the regulatory activity being planned by the Federal government can be followed as part of a single system.

Each entry in this edition of the Calendar describes:

- the problem which the agency developing the regulation intends to address,
- the major alternatives that the agency has identified while developing the regulation,
- the benefits and costs that could result from the proposal,
- the sectors affected by the action,
- the major related regulations,
- any collaboration that occurred while developing the proposal between the issuing agency, other agencies, and State and local governments, and
- the estimated timetable for agency action.

A separate index, allows the public to quickly locate the sectors affected by all the entries. A new appendix on public participation describes the functions of each agency, unique public participation procedures within each agency, any funding available to the public, an information contact and any special telephone services or mailing list opportunities that may be available.

Another appendix gives the publication dates for the next semi-annual regulatory agendas published by member agencies and the date and Federal Register citation of their last published agenda. We are exploring the possibility of tying the agency semi-annual agendas and the Calendar more closely together by providing some consistent types of information in both documents and by coordinating their publication dates.

Other indices and appendices provide the dates of next regulatory actions for all items covered by the Calendar, a status report on regulations that appeared in the first edition but are not included in this edition, and a list of important regulations that are scheduled for agency review under the President's directive in E.O. 12044 for "Sunset" reviews of existing regulations or under an agency's own review process.

The Calendar is organized into six major functional areas:

- Energy, Environment and Natural Resources
- Finance, Banking, and Insurance
- Health and Safety
- Human Resources
- Trade and Commerce
- Transportation and Communications

The Calendar of Federal Regulations is a joint cooperative product of the Regulatory Council staff and the staffs of the 36 Council agencies.

In producing their contributions to the Calendar, agencies were asked to follow a set of guidelines developed by Council staff in consultation with them and with the Office of Management and Budget, the Council of Economic Advisors, the Council on Wage and Price Stability and others in the Executive Office of the President. These guidelines, distributed on July 20, 1979, are available on request from the Council.

Generally, agencies were given broad discretion in determining which of their regulatory activities were important enough for inclusion. At a minimum, they were asked to report on those regulations under development that would be "major" under E.O. 12044. (Under that Executive Order, executive agencies are required to prepare a "regulatory analysis" as they develop "major" regulations.)

The first edition of the Calendar (44 FR 11388; February 28, 1979) went far beyond our initial expectations in terms of both the quality and quantity of information presented. The second edition represents a significant improvement. The May 1980 edition will be even better. We welcome comments and suggestions for further improvement.

Dated: November 23, 1979.

Douglas M. Costle,  
Chairman.

**Table of Contents**

Letter From the Chairman of the United States Regulatory Council..... 68202  
 Users Guide ..... 68203  
 Council Members and the Calendar .... 68203  
 How Agencies Select Entries for This Calendar ..... 68203  
 Description of Entries ..... 68204  
 Data Limitations ..... 68204  
 Information About Additional Copies and Book Reprints..... 68204  
 Request for Comment ..... 68204  
 How To Use the Calendar..... 68204  
 List of Abbreviations ..... 68205  
 Regulations Covered in This Edition (listed by agency) ..... 68205

**Chapters**

Chapter 1 Environment, Energy and Natural Resources ..... 68208  
 Chapter 2 Finance, Banking and Insurance ..... 68259  
 Chapter 3 Health and Safety..... 68262  
 Chapter 4 Human Resources ..... 68309  
 Chapter 5 Trade and Commerce ..... 68318  
 Chapter 6 Transportation and Communication ..... 68338

**Indices**

Index I Sectors Affected by Regulatory Action ..... 68361

Index II Date of Next Regulatory Action.. 68373

**Appendices**

Appendix I Public Participation in the Federal Regulatory Process ..... 68384  
 Appendix II Status of Regulations From the February, 1979 Edition of This Calendar ..... 68400  
 Appendix III Publication Date for Agency Regulatory Agendas..... 68409  
 Appendix IV Important Regulations Scheduled for Agency Review ..... 68410  
 Appendix V Statements From Agencies With No Entries in This Edition of the Calendar ..... 68418

**USERS GUIDE**

**COUNCIL MEMBERS AND THE CALENDAR**

The Regulatory Council is composed of thirty-six Federal departments and agencies. Eighteen Executive Agencies are participating members, and eighteen Independent Regulatory Agencies contribute to the activities of the Council in various capacities, including observer status. The extent of an independent regulatory agency's activity in any Council project is determined by the independent agency. All Council agencies have submitted information for some sections(s) of this Calendar. For a variety of reasons, eleven agencies have not submitted entries for this edition of the Calendar describing any of their regulations under development. These agencies have filed individual comments in Appendix V and they are identified with an asterisk (\*) in the following list. Five of the eleven agencies who did not submit entries describing their regulations under development do not issue regulations of the type covered by this Calendar. These five agencies are identified by a dagger (†) in the following list.

**Executive Agencies**

- †\* Administrative Conference of the United States
  - Department of Agriculture
  - Department of Commerce
  - Department of Energy
  - Department of Health, Education, and Welfare
  - Department of Housing and Urban Development
  - Department of the Interior
  - Department of Justice
  - Department of Labor
  - Department of Transportation
  - Department of the Treasury
  - Environmental Protection Agency
  - Equal Employment Opportunity Commission
  - General Services Administration
  - National Credit Union Administration
  - \*Small Business Administration

- †\* United States International Trade Commission
- Veterans Administration
- Independent Regulatory Agencies
  - Civil Aeronautics Board
  - \*Commodity Futures Trading Commission
  - Consumer Product Safety Commission
  - Federal Communications Commission
  - \*Federal Deposit Insurance Corporation
  - \*Federal Election Commission
  - Federal Energy Regulatory Commission
  - Federal Home Loan Bank Board
  - Federal Maritime Commission
  - †\* Federal Mine Safety and Health Review Commission
  - \*Federal Reserve System
  - Federal Trade Commission
  - Interstate Commerce Commission.
  - †\* National Labor Relations Board
  - Nuclear Regulatory Commission
  - †\* Occupational Safety and Health Review Commission
  - Postal Rate Commission
  - \*Securities and Exchange Commission

**HOW AGENCIES SELECT ENTRIES FOR THIS CALENDAR**

This edition of the Calendar provides an overview of important regulations under development by member agencies of the Regulatory Council. Each agency submits entries for the Calendar according to several criteria. At a minimum, agencies were asked to use the same criteria as those they use for determining when to prepare regulatory analyses under the general guidelines in Executive Order 12044, *Improving Government Regulations* (43 FR 12661, March 14, 1978).

These Executive Order guidelines apply to Executive Agencies and those Independent Agencies who voluntarily choose to follow them and cover:

- regulations that have an annual effect on the economy of \$100 million or more;
- regulations that will impose a major increase in costs of prices for individual industries, levels of government, or geographic regions;
- regulations otherwise determined by the agency head.

In addition to these criteria, agencies have submitted reports on regulations for this edition that concern:

- precedent-setting rules;
- issues of great public interest;
- rules that may increase productivity and/or profits without causing any adverse affects;
- grants and income transfer program regulations that may impose annual compliance costs of \$100 million or more;

—regulations which the agency is repropounding after review pursuant to Executive Order 12044, if the proposed change will have important consequences.

In addition, any regulation which was noted in the first edition of the Calendar is also noted in this second edition unless it has been finally issued or withdrawn. If so, this action is noted in Appendix II Status of Regulations from the February, 1979 Calendar.

The regulations covered in the Calendar, that is, those that are "under development," are those for which an agency is reasonably likely to issue an Advance Notice of Proposed Rulemaking (ANPRM), a Notice of Proposed Rulemaking (NPRM), a Final Rule, or to take other significant action *within the next twelve months*.

A copy of the full set of Regulatory Council guidelines, used by agencies in preparing submissions to the Calendar, is available from the Council.

We hope to continue to improve each edition and ask your help in doing so. Please send us any comments and suggestions that would make this document more useful to you. We would appreciate hearing from you.

Comments on the Calendar To:

Peter J. Pétkas  
Director  
United States Regulatory Council  
Washington, D.C. 20503  
Telephone (202) 395-6110

#### DESCRIPTION OF ENTRIES

Category—Each calendar entry describes a regulation and contains the following standard categories of information

Description—The following information is available in each category

Title	Self evident.
Legal Authority	A citation of the statutory authority under which the regulatory action is taken.
Statement of Problem	A brief discussion of the problem that the regulation is addressing.
Alternatives Under Consideration	A brief description of the major choices the agency is considering to achieve its regulatory objectives.
Summary of Benefits	A discussion of the expected direct and indirect benefits of the regulatory action.
Summary of Costs	A discussion of the expected direct and indirect costs of this action.
Sectors Affected	An identification of the sectors of the economy, population, government, etc., that will be affected by the proposed regulation.
Related Regulations and Actions	A description of other regulations or actions, either within or outside the agency, that are related to the regulation under consideration.
Active Government Collaboration	The steps the agency is taking to coordinate the proposed regulation with any other Federal, State or local agencies.
Timetable	A chronological listing of the future major steps which the agency will take to develop the regulation.
Available Documents	A list of major background documents related to the proposed regulation and notice of where they may be obtained or read.
Agency Contact	The name, address, and telephone number of a person in the agency who can respond to questions about the regulation.

#### DATA LIMITATIONS

Agencies prepared submissions for this edition of the Calendar to give the public the earliest possible notice of their schedules for proposing and promulgating regulations. They have tried to predict their future plans accurately, but dates and schedules are still tentative. Some regulations listed may be withdrawn, and some not listed may be proposed or promulgated. The regulations included that are going to be proposed or promulgated may be developed at an earlier or later date than those listed in the Calendar. This Calendar does not create a legal obligation on submitting agencies to adhere to schedules within it or to confine their regulatory activities to those regulations that appear. The information in this edition is accurate as of November 1, 1979, to the best of the submitting agencies' knowledge.

Readers should note that information on costs, benefits, and other economic impacts makes up only a part of the basis for decisions in regulatory agencies. In particular, agencies do not mechanically add up estimates of costs on the one hand, and benefits on the other, and then act on that basis. Furthermore, there is considerable disagreement about methods used for estimating costs, benefits, and other economic impacts. Necessarily, therefore, economic information

contained in the Calendar is not developed using a common methodology.

#### INFORMATION ABOUT ADDITIONAL COPIES AND BOOK REPRINTS

Additional copies of this Federal Register edition of the Calendar are available for \$75 each from:

Superintendent of Documents  
Washington, D.C. 20402  
(202) 783-3238  
Stock No. 022-003-01044-1

In addition, the Council will republish this Calendar in a book format. It too will be available from the Superintendent of Documents as Stock No. 052-003-00721-5. The price of the book volume is not available at the time of this publication. Please contact the Council or the Superintendent of Documents for further information.

#### REQUEST FOR COMMENT

The Calendar of Federal Regulations is designed as a tool for you, the user, to quickly locate information on the regulations described in it and to help you to participate effectively in the Federal regulatory process.

The Calendar is issued every six months; this is the second edition. We surveyed many of those who used the February, 1979 edition and incorporated in this edition, to the extent possible, the suggestions they had for improving the document.

#### HOW TO USE THE CALENDAR

The Calendar is organized to help users locate information about regulations of interest to them. The Calendar contains a Table of Contents, Users Guide, six chapters, two indices, and five appendices.

The **USERS GUIDE** briefly explains what criteria the agencies used to select regulations to be described in the Calendar, describes the form of the entries and the limitations on the data presented, explains how to use the Calendar, lists the abbreviations used, and indicates in which chapter individual regulations appear.

The **CHAPTERS** are divided into six major areas of regulatory activity. Regulations within the chapters are organized into chapters alphabetically, first by Executive, and then by Independent Agencies, then by agency division, and finally by title of regulation. The six chapters are:

*Chapter I: Energy, Environment and Natural Resources*, containing regulations concerning energy sources, environmental concerns such as air and water pollution, and natural resource concerns such as fishery management plans.

*Chapter II: Finance, Banking and Insurance*, contains regulations dealing with these financial matters.  
*Chapter III: Health and Safety*, contains regulations dealing with human health and safety, such as those affecting medical care and nutrition, labeling requirements, and workplace safety requirements.

*Chapter IV: Human Resources* contains regulations dealing with social justice and nondiscrimination.

*Chapter V: Trade and Commerce* contains regulations dealing with business and trade practices such as advertising.

*Chapter VI: Transportation and Communication* contains regulations dealing with the management of various forms of transportation and communication.

We have created seven indices and appendices to aid the Calendar reader in quickly locating information of importance in this document.

The **INDICES** provide quick and easy ways to refer to material contained in

the entries, including the sectors affected by each proposal and the estimated date of the next regulatory action.

The APPENDICES provide helpful information to the Calendar user on public participation procedures, the status of the regulations from the last edition of the Calendar, the publication date for the semiannual Agency Regulatory Agendas, the important regulations scheduled for agency review, and any statement from agencies who did not submit entries for this edition of the Calendar.

Each index and appendix begins with a brief description of its contents and how to use it.

**LIST OF ABBREVIATIONS**

The following abbreviations appear throughout this edition of the Calendar:

**ANPRM**—The Advanced Notice of Proposed Rulemaking is a preliminary notice that an agency is considering a regulatory action. It is issued before the agency develops a detailed proposed rule. It usually describes the general area subject to the regulation, lists the alternatives that are under consideration and asks for public comment in developing a proposed rule.

**EO**—Executive Order

**NPRM**—The Notice of Proposed Rulemaking is the document issued by an agency and published in the Federal Register that solicits public comment on a proposed regulatory action. Under the Administrative Procedure Act, it must include, at a minimum:

- A statement of the time, place and nature of the public rulemaking proceedings.
- Reference to the legal authority under which the rule is proposed.
- Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

The following is a list of abbreviations for the agencies and their subunits that are mentioned in the Calendar.

*Executive Agencies*

- ACUS**—Administrative Conference of the United States
- USDA**—United States Department of Agriculture
  - AMS**—Agriculture Marketing Service
  - FNS**—Food and Nutrition Service
  - FSQS**—Food Safety and Quality Service
  - SCS**—Soil Conservation Service
- DOC**—Department of Commerce
  - EDA**—Economic Development Administration
  - ITA**—Industry and Trade Administration
  - NOAA**—National Oceanic and Atmospheric Administration
  - OCCZM**—Office of Coastal Zone

- Management**
- MARAD**—Maritime Administration
- DOE**—Department of Energy
  - BCS**—Buildings and Community Systems
  - CS**—Conservation and Solar Applications
  - ERA**—Economic Regulatory Administration
  - RA**—Resource Applications
- HEW**—Department of Health, Education, and Welfare
  - FDA**—Food and Drug Administration
  - HCFA**—Health Care Financing Administration
- HUD**—Department of Housing and Urban Development
  - FIA**—Federal Insurance Administration
  - HOUS**—Office of the Assistant Secretary for Housing
  - NVACP**—Neighborhoods, Voluntary Associations and Consumer Protection
- DOI**—Department of the Interior
  - BLM**—Bureau of Land Management
  - FWS**—Fish and Wildlife Service
  - HCRS**—Heritage Conservation and Recreation Service
  - OSM**—Office of Surface Mining
  - WPRS**—Water and Power Resource Service
- DOJ**—Department of Justice
  - BOP**—Bureau of Prisons
  - CRD**—Civil Rights Division
  - INS**—Immigration and Naturalization Service
  - LEAA**—Law Enforcement Assistance Administration
- DOL**—Department of Labor
  - ESA**—Employment Standards Administration
  - ETA**—Employment and Training Administration
  - LMSA**—Labor Management Services Administration
  - MSHA**—Mine Safety and Health Administration
- DOT**—Department of Transportation
  - FAA**—Federal Aviation Administration
  - FHWA**—Federal Highway Administration
  - FRA**—Federal Railroad Administration
  - NHTSA**—National Highway Traffic Safety Administration
  - USCG**—United States Coast Guard
- TREAS**—Department of the Treasury
  - ATF**—Alcohol, Tobacco and Firearms Bureau
- EPA**—Environmental Protection Agency
  - OANR**—Office of Air, Noise, and Radiation
  - ORD**—Office of Research and Development
  - OPTS**—Office of Pesticides and Toxic Substances
  - OWWM**—Office of Water and Waste Management
- EEOC**—Equal Employment Opportunity Commission

- GSA**—General Services Administration
- NARS**—National Archives and Records Services
- NCUA**—National Credit Union Administration
- SBA**—Small Business Administration
- USITC**—United States International Trade Commission
- VA**—Veterans Administration
- Independent Regulatory Agencies*
- CAB**—Civil Aeronautics Board
- CFTC**—Commodity Futures Trading Commission
- CPSC**—Consumer Product Safety Commission
- FCC**—Federal Communications Commission
- FDIC**—Federal Deposit Insurance Corporation
- FEC**—Federal Election Commission
- FERC**—Federal Energy Regulatory Commission
- FHLBB**—Federal Home Loan Bank Board
- FMC**—Federal Maritime Commission
- FMSHRC**—Federal Mine Safety and Health Review Commission
- FRS**—Federal Reserve System
- FTC**—Federal Trade Commission
- ICC**—Interstate Commerce Commission
- NLRB**—National Labor Relations Board
- NRC**—Nuclear Regulatory Commission
- OSHRC**—Occupational Safety and Health Review Commission
- PRC**—Postal Rate Commission
- SEC**—Securities and Exchange Commission

**REGULATIONS COVERED IN THIS EDITION (listed by agency)**

The following table lists all regulations covered in this edition of the Calendar. The table is organized alphabetically first by Executive and by Independent Agencies, then by agency division, and finally by title of regulation.

Within the Calendar itself entries are organized into Chapters according to functional areas of regulatory activity. The righthand column of the table below identifies the Chapter in which each entry appears.

- Chapter 1: Energy, Environment and Natural Resources
- Chapter 2: Finance, Banking and Insurance
- Chapter 3: Health and Safety
- Chapter 4: Human Resources
- Chapter 5: Trade and Commerce
- Chapter 6: Transportation and Communication

Each chapter starts with its own table of contents to aid the reader in locating an item of interest.

Agency and Regulation	Chapter
USDA-AMS Amendments to Federal Seed Act Regulations	5
USDA-AMS Proposed Federal Milk Order for Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho)	5

Agency and Regulation	Chapter	Agency and Regulation	Chapter
USDA-FNS Regulation by the Secretary of Agriculture of foods sold on school premises in competition with the National School Lunch Program and the School Breakfast Program	3	struction work at all surface mines and surface areas of underground mines	3
USDA-FSQS Proposed Net Weight Regulations	5	DOL-OSHA Chemical Warning Systems (chemical labeling)	3
USDA-FSQS Voluntary Meat and Poultry Plant Quality Control Systems	5	DOL-OSHA Generic standard for occupational exposure to pesticides during manufacture and information	3
USDA-SCS Watershed Protection and Flood Prevention Program	1	DOL-OSHA Regulation for reducing safety and health hazards in abrasive blasting operations	3
DOC-MARAD Operating-differential subsidy for bulk cargo vessels engaged in world wide service; essential service requirement (48 CFR 252.21)	6	DOL-OSHA Safety and health regulations for construction activities in tunnels and shafts	3
DOC-NOAA Regulations implementing a fishery management plan for the butterfish fishery of the Northwest Atlantic Ocean under the Fishery Conservation and Management Act of 1976, as amended	1	DOL-OSHA Safety standard for walking and working surfaces general industry	3
DOC-NOAA Regulations implementing a fishery management plan for the groundfish fishery for the Bering Sea/Aleutian Island area under the Fishery Conservation and Management Act of 1976, as amended	1	DOL-OSHA Standard for occupational exposures to hexavalent chromium	3
DOC-NOAA Regulations implementing a preliminary fishery management plan for Pacific billfish and oceanic sharks under the Fishery Conservation and Management Act of 1976, as amended	1	DOT-FAA Flammability standards for crewmember uniforms	3
DOC-NDAA-OCZM Channel Islands Marine Sanctuary Regulations	1	DOT-FHWA Certification of vehicle size and weight enforcement	6
DOE-BCS HUD-NVACP Energy performance standards for new buildings	1	DOT-FHWA Design Standards for highways—geometric design standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways	6
DOE-CS Energy Conservation Program for Consumer Products (Other than Automobiles)	1	DOT-FHWA Hours of service of drivers	3
DOE-ERA Amendments to Puerto Rican naphtha entitlements regulations	1	DOT-FHWA Interstate maintenance guidelines	6
DOE-ERA Amendments to the emergency provisions of the crude oil buy/sell program	1	DOT-FHWA Minimum cab space dimensions	3
DOE-ERA Gasohol Marketing Regulations	1	DOT-FHWA Withdrawal of Interstate segments and substitution of alternative transportation projects	6
DOE-ERA Incentives for refinery investment	1	DOT-FRA Alerting lights display—locomotives	3
DOE-ERA Natural gas curtailment priorities and related issues	1	DOT-NHTSA Fuel economy standards for model years 1982-85 light trucks	1
DOE-RA Outer continental shelf (OCS) sequential bidding regulations	1	DOT-USCG Construction and equipment for existing self-propelled vessels carrying bulk liquefied gases	3
DOE-RA Profit share bidding systems regulations for federal outer continental shelf (OCS) oil and gas leases	1	DOT-USCG Construction standards for the prevention of pollution from new tank barges due to accidental hull damage; and regulatory action to reduce pollution from existing tank barges due to accidental hull damage	1
DOE-RA Proposed outer continental shelf (OCS) bidding systems regulations	1	TREAS-ATF Advertising Regulations under the Federal Alcohol Administration Act	5
HEW-FDA Chemical Compounds Used In Food Producing Animals; Criteria and Procedures For Evaluating Assays for Carcinogenic Residues	3	TREAS-ATF Partial Ingredient Labeling of Wine, Distilled Spirits, and Malt Beverages	5
HEW-FDA Food Labeling Initiatives	3	TREAS-ATF Revision of the Distilled Spirits Tax System	5
HEW-FDA Prescription Drug Products; Patient Labeling Requirements	3	TREAS-ATF Unlawful Trade Practices under the Federal Alcohol Administration Act	5
HEW-HCFA Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities	3	EPA-OANR Environmental Standard for Inactive Uranium Mill Tailings	3
HEW-HCFA Life Safety Code in Hospitals, Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)	3	EPA-OANR Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Vehicles	1
HEW-HCFA Uniform Reporting Systems for Health Services Facilities and Organizations	3	EPA-OANR Gaseous Emission Regulations for 1985 and Later Model Year Heavy-Duty Vehicles	1
HUD-NVACP; DOE-BCS Energy performance standards for new buildings	1	EPA-OANR Listing of coke oven emissions as a hazardous air pollutant and development of emission limitations	1
DOI-BLM Surface management of mining claims located on the public lands	1	EPA-OANR National emission standards for hazardous air pollutants—benzene	1
DOI-FWS Endangered Species Act, § 4, Regulations for Listing Endangered and Threatened Wildlife and Plants	1	EPA-OANR Noise Emission Standard for Newly Manufactured Motorcycles	1
DOI-HCRS Rules and Regulations Pertaining to the Urban Park and Recreation Recovery Program	1	EPA-OANR Noise Emission Standard for Newly Manufactured Wheel and Crawler Tractors	1
DOI-WPRS Rules and regulations for acreage limitation under Federal Reclamation law	1	EPA-OANR Particulate Regulations for Light-Duty Diesel Vehicles	1
DOJ-BOP Non-Discrimination Towards Inmates	4	EPA-OANR Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer	1
DOJ-CRD Regulations prohibiting discrimination solely on the basis of handicap in Federally assisted programs	4	EPA-OANR Proposed Emission Regulations for 1983 and Later Model Year Light-Duty Trucks	1
DOJ-INS Replacement of Alien Registration Receipt Cards—Requirement for Single Fingerprint and Personal Appearance	4	EPA-OANR Regulations for the Prevention of Significant Deterioration (PSD) resulting from hydrocarbons for carbon monoxide, nitrogen oxides, ozone and lead (PSD Set II)	1
DOJ-LEAA Equal Service Program Guidelines	4	EPA-OANR Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide (CO)	1
DOJ-LEAA Procedures Relating to the Implementation of the National Environmental Policy Act	1	EPA-OANR Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter (PM)	1
DOL-ESA Proposed amendment to the Sex Discrimination Guidelines (41 CFR 60-20) governing insurance and other employee benefit plans	4	EPA-OANR Review of the National Ambient Air Quality Standards for Nitrogen Dioxide	1
DOL-ETA Nondiscrimination on the Basis of Handicap in Federally Assisted Programs	4	EPA-OANR Review of the National Ambient Air Quality Standards for sulfur dioxide	1
DOL-MSHA Mandatory safety standards for surface coal mines and surface areas of underground coal mines	3	EPA-OANR Standards of performance to control atmospheric emissions from industrial boilers	1
DOL-MSHA Regulations setting forth requirements for safety and health training for mine construction workers	3	EPA-OANR Visibility Plan Requirements	1
DOL-MSHA Requirements for construction and maintenance of impoundments and tailings piles at metal and nonmetal mines	3	EPA-OPTS Pesticide Registration Guidelines	3
DOL-MSHA Safety and health standards for construction work at all surface mines and surface areas of underground mines	3	EPA-OPTS Rules and notice forms for premanufacture Notification of New Chemical Substances	3
		EPA-OPTS Rules restricting the commercial and industrial use of asbestos fibers	3
		EPA-OPTS Standards and Rules for Testing of Chemical Substances and Mixtures	3
		EPA-ORD Fuels and Fuel Additives Registration	1
		EPA-OWWM Control of Organic Chemicals in Drinking Water	3

Agency and Regulation	Chapter
EPA-OVWM Effluent Guidelines and Standards Controlling the discharge of Pollutants from steam electric Power Plants into Navigable Waterways	3
EPA-OVWM Hazardous Waste Regulations: Core regulations to control hazardous solid waste from generation to final disposal	3
EEOC Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained	4
GSA-NARS Freedom of Information Act requests for national security classified information in the National Archives	2
NCUA Organizing a Federal Credit Union	2
VA. Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance	4
CAB Air Carrier Fitness	6
CAB Air Carrier Insurance and Liability	6
CAB Essential Air Service Subsidy Guidelines	6
CAB Plain English for Airline/Passenger Contracts	6
CPSC Consumer Products Containing Asbestos	3
CPSC Omnidirectional Citizen Band Base Station Antenna Standard	3
CPSC Upholstered furniture cigarette flammability standard	3
FCC Creation of New Personal Radio Service (PR Docket 79-140)	6
FCC Deregulation of Competitive Domestic Telecommunications Market (CG Docket 79-252)	6
FCC Notice of Inquiry/Notice of Proposed Rule-making in the Matter of Radio Deregulation (BC Docket 79-219)	6
FERC Procedures Governing Applications for Special Relief Under §§ 104, 106, and 109 of the Natural Gas Policy Act of 1978 (Docket No. RM79-67)	1
FERC Regulations concerning sales of electric power between qualifying cogeneration and small power production facilities and electric utilities, and exemption of such facilities from regulation, under §§ 201 and 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA)	1
FERC Regulations Governing Applications for Major Unconstructed Projects	1
FERC Regulations to Implement the Second Stage of Incremental Pricing under the Natural Gas Policy Act	1
FERC Valuation of Common Carrier Pipelines	1
FHLBB Monitoring Fair Lending Practices	2
FHLBB Proposed Amendments on Outside Borrowing	2
FHLBB Washington, D.C.-Md.-Va. SMSA Branching	2
FMC Amendment to financial reports by common carriers by water in the domestic offshore trades	6
FMC Amendments to tariff requirements for controlled carriers	6
FMC Certification of company policies and efforts to combat rebating in the foreign commerce of the United States	6
FMC Filing of agreements by common carriers and other persons subject to the Shipping Act of 1916	6
FMC Revision of the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders"	6
FMC Surcharges under dual-rate contracts on less than ninety days' notice	6
FTC Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans	5
FTC Mobile Homes Sales and Service Trade Regulation Rule	5
FTC Proposed Trade Regulation Rule (TRR) on Standards and Certification (43 FR 57269, December 7, 1978)	5
FTC Rulemaking on Children's Advertising	5
FTC Trade Regulation Rule Concerning Credit Practices	5
ICC Improvement of TOFC/COFC Regulation (Ex Parte No. 230 (Sub-No. 5))	6
ICC Intercompany Hauling (Ex Parte No. MC-122)	6
ICC Western Coal Investigation—Guidelines for Railroad Rate Structure (Ex Parte No. 347)	6
NRC Decommissioning and Site Reclamation of Uranium and Thorium Mills	3
NRC Decommissioning of Nuclear Facilities	3
NRC Disposal of High Level Radioactive Waste in Geologic Repositories	3
PRC Postal Rate Commission Docket MC79-2 to consider a request of the U.S. Postal Service for the establishment of an Express Mail Metro Service sub-class filed with the Commission on December 7, 1978	6
PRC Postal Rate Commission Docket MC79-3, instituted by the Commission pursuant to 39 U.S.C. § 3623(b), to hear evidence on the preferential	

Agency and Regulation	Chapter
treatment, commonly referred to as "red tag" treatment, afforded certain time-value publications sent as second-class mail	6
<b>Chapter I—Energy, Environment, and Natural Resources</b>	
<b>USDA-SCS</b>	
Watershed Protection and Flood Prevention Program	68208
<b>DOC-NOAA</b>	
Regulation implementing a fishery management plan for the butterfish fishery of the Northwest Atlantic Ocean under the Fishery Conservation and Management Act of 1976, as amended	68209
Regulations implementing a fishery management plan for the groundfish fishery for the Bering Sea/Aleutian Island area under the Fishery Conservation and Management Act of 1976, as amended	68211
Regulations implementing a preliminary fishery management plan for Pacific billfish and oceanic sharks under the Fishery Conservation and Management Act of 1976, as amended	68213
<b>DOC-NOAA-OCZM</b>	
Channel Islands Marine Sanctuary Regulations	68216
<b>DOE-SCS</b>	
<b>HUD-NVACP</b>	
Energy performance standards for new buildings	68218
<b>DOE-SC</b>	
Energy Conservation Program for Consumer Products (Other than Automobiles)	68219
<b>DOE-ERA</b>	
Amendments to Puerto Rican naphtha entitlements regulations	68220
Amendments to the emergency provisions of the crude oil buy/sell program	68222
Gasohol Marketing Regulations	68223
Incentives for refinery investment	68224
Natural gas curtailment priorities and related issues	68225
<b>DOE-RA</b>	
Outer continental shelf (OCS) sequential bidding regulations	68226
Profit share bidding systems regulations for federal outer continental shelf (OCS) oil and gas leases	68227
Proposed outer continental shelf (OCS) bidding systems regulations	68228
<b>HUD-NVACP</b>	
<b>DOE-BCS</b>	
Energy Performance Standards for new buildings	68229
<b>DOI-BLM</b>	
Surface management of mining claims located on the public lands	68229
<b>DOI-FWS</b>	
Endangered Species Act, § 4, Regulations for Listing Endangered and Threatened Wildlife and Plants	68230
<b>DOI-HCRS</b>	
Rules and Regulations Pertaining to the Urban Park and Recreation Recovery Program	68231
<b>DOI-WPPRS</b>	
Rules and regulations for acreage limitation under Federal Reclamation law	68232
<b>DOJ-LEAA</b>	
Procedures relating to the Implementation of the National Environmental Policy Act	68233
<b>DOT-NHTSA</b>	
Fuel economy standards for model years 1982-85 light trucks	68234
<b>DOT-USCG</b>	
Construction standards for the prevention of pollution from new tank barges due to accident hull damage; and regulatory action to reduce pollution from existing tank barges due to accidental hull damage	68235
<b>EPA-DANR</b>	
Gaseous Emission Regulations for 1965 and Later Model Year Heavy-Duty Vehicles	68236
Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Vehicle	68237
Listing of coke oven emissions as a hazardous air pollutant and development of emission limitations	68238
National emission standards for hazardous air pollutants—benzene	68239
Noise Emission Standard for Newly Manufactured Motorcycles	68240

Noise Emission Standard for Newly Manufactured Wheel and Crawler Tractors .....	68241
EPA-DANR	
Particulate Regulations for Light-Duty diesel Vehicles Proposed Emission Regulations for 1983 and Later Model Year Light Duty Trucks .....	68242
Regulations for the Prevention of Significant Determination (PSD) resulting from hydrocarbons, carbon monoxide, nitrogen oxides, ozone and lead (PSD Set II) .....	68243
Review and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide (CO) Review, and Possible Revision of the National Ambient Air Quality Standards for Particulate Matter (PM) Review of the National Ambient Air Quality Standards for Sulphur Dioxide .....	68244
Review of the National Ambient Air Quality Standards for Nitrogen Dioxide .....	68245
Standards for performance to control atmospheric emissions from industrial boilers .....	68246
Visibility Plan Requirements .....	68247
EPA-ORD	
Fuels and Fuel Additives Registration .....	68248
EPA-OQWM	
Effluent Guidelines and Standards Controlling the Discharge of Pollutants from Stream Electric Power Plants into Navigable Waterways .....	68249
FERC -	
Procedures Governing Applications for Special Relief Under §§ 104, 106, and 109 of the Natural Gas Policy Act of 1978 (Docket No. RM79-67) .....	68250
Regulations concerning sales of electric power between qualifying cogeneration and small power production facilities and electric utilities, and exemption of such facilities from regulation, under §§ 201 and 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA) .....	68251
Regulations Governing Applications for Major Unconstructed Projects .....	68252
Regulations to Implement the Second Stage of Incremental Pricing under the Natural Gas Policy Act .....	68253
Valuation of Common Carrier Pipelines .....	68254

## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

#### Watershed protection and flood prevention program

##### Legal Authority

Watershed Protection and Flood Prevention Act of 1954, 16 U.S.C. § 1001 *et seq.*

##### Statement of Problem

The Watershed Protection and Flood Prevention Act authorizes the Secretary of Agriculture to give technical and financial help to sponsoring local organizations to plan and install watershed projects to prevent erosion, sedimentation, and floodwater damage; to further the conservation, development, use, and disposal of water; and to further the conservation and proper use of land. Sponsoring local organizations consist of units of state and local government. The sponsoring local organizations for a watershed project must have the ability under state statutes to obtain lands for project works of improvement, bear their share of the cost of installation, and operate and maintain the project—such as a dam—after installation. The majority of watershed projects are located in rural

areas and provide benefits such as flood damage reduction, erosion reduction, recreation, irrigation, water conservation, and municipal/industrial water supply to rural communities and agricultural lands. However, some projects benefit urban areas.

During recent years, the Administration, State and Federal agencies, and other groups have expressed concern about the environmental consequences, the economic evaluation procedures, and the equity and safety aspects of all water resource projects. As a result, the President directed that a comprehensive review of Federal water policy be made. In 1978, the Administration finalized its water policy. Thirteen directives were issued to implement the water policy initiatives. Some of these initiatives will require changes in procedures for all water resource projects and will probably require some changes in the rules and regulations for watershed programs. The U.S. Water Resources Council will establish standardized evaluation procedures for all water resource projects.

Executive Order 12044 and the Secretary of Agriculture's Memorandum 1955 require that the rules and regulations for all programs be systematically reviewed at regularly specified intervals. In keeping with this requirement, the President's initiatives, and other concerns, the Department of Agriculture has scheduled for review the rules and regulations governing the formulation, implementation, and operation of watershed projects.

##### Alternatives Under Consideration

USDA will develop and consider alternatives as a means of resolving issues in each of the problem areas (environment, economic evaluation, equity aspects, safety aspects).

The review will consider such things as the appropriate mix of structural and nonstructural alternatives to achieve flood control, appropriate levels of protection to achieve national flood damage objectives, and appropriate measures to improve soil and water conservation.

The alternatives will basically be geared to enhance protection which is economically and environmentally defensible.

##### Summary of Benefits

Not available at this time.

##### Summary of Costs

Not available at this time.

## Sectors Affected

A change in the rules and regulations for the Watershed Protection and Flood Prevention Program could affect people living in rural and urban watersheds of up to 250,000 acres in size that have erosion, sediment, flood, drainage, irrigation, recreation, or water supply problems. The units of local government that might sponsor a watershed project and therefore be affected include the following: Soil and Water Conservation Districts; Conservancy Districts; Board of County Commissioners; County Councils; Water Districts; Natural Resources Districts; City, Town, and Village Councils; State Departments of Natural Resources; State Fish and Wildlife Departments; and State Park Departments.

## Related Regulations and Actions

**Internal:** 1. Compliance with NEPA (National Environmental Protection Act), Procedures for SCS Assisted Programs, 7 CFR 650.1.

2. Compliance with NEPA, Related Environmental Concerns, Flood Plain Management, 7 CFR 650.25.

3. Support Activities, Compliance with NEPA, Protection of Wetlands, 7 CFR 650.26.

4. Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs, 7 CFR 656.

5. Prime and Unique Farmlands, 7 CFR 657. Describes prime and unique farmlands and states policy for protecting and preserving them for agricultural use.

**External:** 1. Principles and Standards for Planning Water and Related Land Resources—Water Resources Council (WRC).

2. Procedures for Evaluation of Natural Economic Development Benefits and Costs in Water Resources Planning—WRC.

## Active Government Collaboration

During the study of rules and regulations for the watershed program, the Soil Conservation Service will coordinate applicable changes with the Forest Service, Farmers Home Administration, Agricultural Stabilization and Conservation Service, and the Economics, Statistics, and Cooperatives Service, in addition to its work with the Water Resources Council.

Prior to initiating review of the program, USDA will develop a plan for public participation by the public groups, State and local governmental groups, and other Federal agencies.

## Timetable

USDA will not implement the study of

rules and regulations for the watershed program until the Water Resources Council has finalized new procedures for planning and evaluating water resource projects.

The present schedule is as follows: Revision of "Principles and Standards for Planning Water and Related Land Resources"—November 1979.

National Economic Development Manual—November 1979.

Environmental Quality Manual—September 1980.

Supplement to National Economic Development Manual—September 1980.

Review of the rules and regulations for watershed projects (7 CFR Chapter VI, Part 622) is scheduled to begin in May 1980. USDA will publish notice of the start of this study in the Federal Register. The study will be conducted over a five-month period with a draft proposal in October 1980. Final rules and regulations are scheduled for publication in April 1981. An impact (regulatory) analysis will be done as a part of the rulemaking process.

## Available Documents

Watershed Projects, 7 CFR 622, Source: 40 FR 12475, March 19, 1975.

## Agency Contact

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

Regulations Implementing a fishery management plan for the butterfish fishery of the Northwest Atlantic Ocean under the Fishery Conservation and Management Act of 1976, as amended

### Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

### Statement of Problem

#### A. Background Information on Fishery Management Plans

The Fishery Conservation and Management Act of 1976, (FCMA) as amended, established a national fishery management program for the conservation and management of fishery

resources which are subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal State and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program as necessary to prevent overfishing, to rebuild overfished stocks; to ensure conservation, and to realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the FCMA calls for the preparation of fishery management plans (FMP's) by the eight Regional Fishery Management Councils (the Councils) or, under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMP's by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority (a fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics). Enforcement of the FCMA, including the provisions of approved FMP's and the implementing regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The FCMA established seven National Standards to be applied by both the Council and the Secretary in the preparation and review of any FMP, and in the promulgation of implementing regulations. The National Standards require that FMP's be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states (assigning fair and equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize conservation and management costs. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery, modified by relevant economic, social, or ecological factors. MSY is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the OY of a fishery which U.S. fishermen are unable to catch. In order to participate in a U.S. fishery in the fishery conservation zone (FCZ), a foreign fishing vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

A foreign nation begins to obtain entry into a U.S. fishery by signing a Governing International Fishery Agreement (GIFA) before making formal application for fishing permits. This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the FCMA. Any existing international agreements, other than GIFA's, are considered valid only if they were in effect before the FCMA was enacted and have not expired, been renegotiated, or been negated in any manner.

### B. The Butterfish FMP

The Mid-Atlantic Fishery Management Council (the Council) has developed an FMP for the butterfish fishery of the Northwest Atlantic Ocean to provide a framework for controlling the catch levels of U.S. and foreign fishing fleets. In 1978, the United States began to export significant quantities of butterfish to Japan. The development of this export market was partially caused by reductions in foreign butterfish catches in the FCZ from an annual average level of 9,146 metric tons (mt) between 1967-1976, to 5,500 mt in 1977, and 4,000 mt in 1978 and 1979. The Council anticipates that the growth of the U.S. butterfish fishery, coupled with foreign catches, can eventually lead to overfishing and depletion of the resource if it does not place limits on the total harvest. In addition, the Council is concerned with the foreign catch of butterfish in the FCZ, because it is an unavoidable by-catch in a directed fishery for Atlantic squid. An uncontrolled incidental catch of butterfish could adversely affect the harvesting costs of U.S. fishing vessels by reducing butterfish stock densities.

At present, the butterfish fishery is being managed by regulations implemented through a Preliminary Fishery Management Plan (PMP) for Foreign Trawl Fisheries of the Northwest Atlantic. Under a PMP, however, regulations may be implemented to cover only foreign fishing operations in the FCZ. By preparing an FMP, the Council can more effectively specify optimum yield and

management measures for both domestic and foreign fishing in order to provide a stable and comprehensive management regime for butterfish. Specific management objectives the Council identified for this fishery are as follows: (1) promote the growth of the U.S. butterfish export industry; (2) minimize the cost of harvesting butterfish; (3) increase employment opportunities for U.S. commercial fishermen; (4) prevent exploitation of the butterfish resource beyond the level that produces the maximum sustainable yield; and (5) minimize costs of enforcement and management of the butterfish resource.

### Alternatives Under Consideration

In the process of preparing the FMP, the Council considered alternative management options which were expected to lead to the attainment of the plan's objectives. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings or other appropriate means, the advice and recommendations of all interested persons, including States, commercial and recreational fishery groups, and environmental organizations. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation.

Alternative management options the Council has considered for the butterfish FMP were as follows:

#### 1. Optimum Yields of 11,000 mt and 16,000 mt

The Council proposed an optimum yield of 11,000 mt. U.S. harvesting and processing capacity were estimated at 7,000 mt, and the total allowable level of foreign fishing (TALFF) was set at 4,000 mt. The TALFF remains unchanged from the 1978 and 1979 PMP's. Since the U.S. fishery is in its initial stages of development, the Council believes that an OY of 16,000 mt, with U.S. capacity set at 7,000 mt and a TALFF of 9,000 mt, might hinder U.S. export opportunities. In this case, foreign fleets could catch Atlantic butterfish rather than purchase it from U.S. processors. In addition, the Council believes that a TALFF of 4,000 mt is sufficient to allow foreign fleets to harvest their squid allocations as specified in the FMP for Atlantic squid.

#### 2. Continue the 1979 PMP

Under this alternative the 1979 PMP prepared by the Secretary would remain in effect. This PMP proposed an optimum yield of 16,000 mt, a U.S. harvesting and processing capacity of

12,000 mt, and a TALFF of 4,000 mt. The continuation of the PMP would likely result in a large reallocation of butterfish to foreign fleets at the end of the 1979-1980 fishing season. This reallocation would come from any uncaught portion of the U.S. allocation. A reallocation would be expected to have an adverse impact on the U.S. export market for butterfish because foreign fleets could catch the butterfish instead of purchasing it from U.S. firms.

### 3. Different fishery management units

The Council considered the following management units: (a) butterfish within the FCZ north of Cape Hatteras; (b) butterfish within all U.S. waters north of Cape Hatteras; and (c) all butterfish under U.S. jurisdiction north of Cape Hatteras. The Council proposed option (c) since it covers the entire range of the butterfish stock (territorial waters, the FCZ, and Canadian waters). The proposed OY is based on this option in anticipation of a U.S.-Canadian bilateral fishing agreement. If the United States and Canada fail to achieve an agreement during the 1979-1980 fishing season, then the management unit is the same as option (b).

### 4. Gear, area, and fishing season restrictions

The Council believes that these management measures for domestic fishermen are not necessary at this time because overfishing is not a serious problem.

### Summary of Benefits

A major goal of the Mid-Atlantic Council is to foster the development of the U.S. fishery for butterfish for export. The Council intends to achieve this goal by modifying maximum sustainable yield (MSY) as prescribed in the FCMA, on the basis of an economic factor concerning the impact of foreign fishing on the development of a U.S. export market for butterfish. The proposed OY of 11,000 mt is below the estimated MSY of 16,000 mt. U.S. capacity was estimated at 7,000 mt and the TALFF was set at 4,000 mt. The Council indicated in the FMP that a TALFF in excess of 4,000 mt will hinder the development of a U.S. butterfish export industry.

An increase in butterfish exports occurred in 1978. U.S. processors reported that exports were negligible in 1977 but in 1978 increased to 2,400 metric tons (mt). The ex-vessel (dockside) value of the exported butterfish was approximately \$2 million. The estimated value of the processed exports ranges between \$3-\$4 million. Estimates of 1979 exports will not be

available until the height of the fall fishing season (September–November).

Under the FMP, the proposed TALFF is 4,000 mt. The current poundage fee for butterfish is 3.5 percent of \$626 per metric ton as specified in the 1979 Foreign Fishing Fee Schedule established pursuant to the FCMA. The TALFF is expected to yield \$87,640 in revenues to the U.S. Treasury.

#### Summary of Costs

Management costs incurred by the Mid-Atlantic Council and the National Marine Fisheries Service will be limited to the collection and processing of basic fishery data for monitoring and revising the FMP. These costs are expected to range between \$10,000–\$30,000 annually.

The Coast Guard will incur enforcement costs, although it is not possible to specify the actual costs for enforcement of the butterfish FMP because of the Coast Guard's concurrent responsibilities for other FMP's and PMP's. Most of the Coast Guard's enforcement costs will be attributable to surveillance and inspection of foreign fishing vessels.

#### Sectors Affected

Sectors of the U.S. economy directly affected by the butterfish FMP are commercial fishermen and processors located in Mid-Atlantic and New England States. In addition, this FMP will affect the fishing fleets of several foreign nations including Japan, Spain, Italy, Mexico, West Germany, and the Soviet Union.

#### Related Regulations and Actions

*Internal:* Regulations implementing the FMP for the squid fishery of the Northwest Atlantic are related to the butterfish FMP because of the potential by-catch of butterfish in a directed fishery for squid. The FMP's for Atlantic herring, Atlantic mackerel, Atlantic groundfish, and the PMP for silver and red hake are also related to the butterfish FMP, since these fisheries are part of the same general geophysical, biological, social, and economic setting. Regulations for a particular fishery may have an impact on the other fisheries by causing transfers of fishing effort. Moreover, the fisheries of the Northwest Atlantic are interrelated because of the high potential for by-catches of non-target species in a directed fishery for another species.

*External:* The Council has reviewed the Coastal Zone Management Programs of Massachusetts and Rhode Island for conflicts with the butterfish FMP. This review indicated that no conflicts presently exist.

#### Active Government Collaboration

The Council has requested comments on the butterfish FMP from the Departments of Interior, State, and Transportation, the Environmental Protection Agency, the coastal States of Maine through North Carolina, the New England and South Atlantic Fishery Management Councils, and various individuals and organizations.

#### Timetable

NPRM (if FMP is approved by the Secretary of Commerce)—  
November 1979.

Final Rule—January 1980.

#### Available Documents

Final Environmental Impact Statement/Fishery Management Plan for the Butterfish Fishery of the Northwest Atlantic Ocean.

Draft Regulatory Analysis for the Butterfish Fishery Management Plan. The documents may be obtained from the agency contact listed below.

#### Agency Contact

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National Marine Fisheries Service  
Plan Review Division, F36  
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#### DOC-NOAA

Regulations implementing a fishery management plan for the groundfish fishery for the Bering Sea Aleutian Island area under the Fishery Conservation and Management Act of 1976, as amended (FCMA)

#### Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

#### Statement of Problem

##### A. Background Information on Fishery Management Plans

The FCMA established a national fishery management program for the conservation and management of fishery resources subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal State and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program as necessary to prevent overfishing, to rebuild overfished stocks, to ensure conservation, and to realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives,

the FCMA calls for the preparation of fishery management plans (FMP's) by the eight Regional Fishery Management Councils (the Councils), or under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMP's by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority, where a fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics. Enforcement of the FCMA, including the provisions of approved FMP's and the implementing regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The FCMA established seven National Standards to be applied by both the Council and the Secretary in the preparation and review of any FMP, and in the promulgation of implementing regulations. The National Standards require that FMP's be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states (assigning fair and equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize the costs of conservation and management measures. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery modified by relevant economic, social, or ecological factors. MSY is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the optimum yield of a fishery which U.S. fishermen are unable to catch. The Secretary of State, in cooperation with the Secretary, determines the allocation of the total allowable level of foreign fishing (TALFF).

##### B. The Bering Sea/Aleutian Island Groundfish FMP

The North Pacific Fishery Management Council (the Council) has developed an FMP for the groundfish fishery of the Bering Sea/Aleutian

Island area off the coast of Alaska. The stocks covered by this FMP are Pacific Ocean perch, pollock, Pacific cod, yellowfin sole, turbot, sablefish, other flounders and flatfish, atka mackerel, squid, and "other species."

The FMP for the groundfish fishery in the Bering Sea/Aleutian Island area was developed to replace the current Preliminary Fisheries Management Plan (PMP). Replacement of the PMP with an FMP was necessitated by the PMP's lack of coverage of a domestic groundfish fishery and the potential for it to have an adverse impact on the halibut fishery.

The FMP addresses four problems: maintaining stocks currently at levels of MSY; rebuilding depleted stocks to levels of abundance producing MSY; controlling the incidental catch of species of commercial importance to U.S. fishermen; and establishing an environment conducive to development of a U.S. groundfish fishery.

(1) *Maintaining or rebuilding of stocks*

NOAA has conducted stock assessment studies on the following categories of Bering Sea/Aleutian groundfish species: Alaska pollock, Pacific halibut, yellowfin sole, turbot, other flatfishes, Pacific cod, rockfishes, sablefish, Atka mackerel, squid, and other species. With the exception of Pacific Ocean perch, Pacific halibut, and sablefish, all other groundfish species in the Bering Sea/Aleutian area are believed to be at levels of abundance equal to or greater than those that would produce MSY.

Pacific Ocean perch stocks are currently considered to be at relatively low levels of abundance because of a continuous decline in catch per unit of effort (CPUE) since 1968, a drastic reduction in the availability of all sizes of Ocean perch between 1969-72, a heavy dependence of the fishery on younger fish, and the lack of any evidence of a strong incoming year class. The target level which would serve the development of a stock rebuilding program was defined as being equal to MSY in the FMP. Therefore, to promote rebuilding, we set the allowable biological catch (ABC=10.75 thousand metric tons (mt)) of Pacific Ocean perch at half of the current equilibrium yield (EY=21.5 thousand mt).

Pacific halibut stocks have declined sharply in the eastern Bering Sea since the early 1960's. Recent surveys indicate an increase in the abundance of juveniles; however, abundance is still below early 1960's levels. An allowable biological catch for Pacific halibut was not set in the FMP since the fishery is

currently regulated by the International Pacific Halibut Commission (IPHC). Instead, OY for species other than halibut covered by the FMP were developed to accommodate rebuilding of halibut stocks. Further, halibut savings areas (closed areas) were proposed in order to reduce the incidental catch of halibut. It is important to note that the rebuilding program of the IPHC is governed by a philosophy rather than a mandate to achieve a specified stock size. Specifically, concern is focused on rebuilding stocks back to levels which can support the maximum catch given the biological and economic conditions of the fishery.

Analyses of catch-per-unit-effort (CPUE) data for sablefish by both U.S. and Japanese scientists show a declining trend. The declining trend in CPUE, coupled with catch data, has been interpreted as indicating that sablefish stocks in the eastern Bering Sea/Aleutian Region are at reduced levels of abundance. The allowable biological catch for sablefish was set at 75% of the estimated MSY (33,000 mt) to facilitate rebuilding of the stock.

(2) *Incidental catch*

Current fishery activity directed at Bering Sea groundfish resources is dominated by foreign fishing fleets. While foreign vessels target on groundfish, substantial numbers of halibut and crabs (king and tanner) are taken as an incidental catch. Although regulations require that these species be released, most die from injuries received during capture. In the eastern Bering Sea, the estimated annual yield loss of halibut due to the incidental catch by foreign vessels has been estimated to be 5,000 mt. Incidental catches of king and tanner crab during 1977 have been estimated to be about 0.6 million and 17.5 million crabs respectively. The magnitude of halibut and crab losses indicates that optimum yields, total allowable levels of foreign fishing, and domestic allowable harvests established in the FMP are capable of affecting several important domestic fisheries.

(3) *Facilitation of development of a U.S. groundfish fishery*

Many U.S. fishing interests perceive the presence of fleets of large foreign trawlers as a de facto impediment to the development of a domestic groundfish trawl fishery in the Bering Sea because of the possibility of: (a) preemption of favored grounds by concentrations of foreign vessels that are two-three times the size of the largest U.S. trawlers, and (b) competition for fish by foreign vessels that can apparently operate successfully at levels of abundance and average fish sizes that are less than

those required for economic operation of domestic trawlers.

Management objectives for the groundfish fishery in the Bering Sea/Aleutian Island area are as follows:

(a) Continue rebuilding the halibut resource so that a viable halibut longline fishery is again available to American fishermen.

(b) Rebuild depleted groundfish stocks to, and maintain healthy groundfish stocks at, levels of abundance that will produce MSY.

(c) Provide an opportunity for U.S. involvement in the Bering Sea/Aleutian groundfish fishery, limited only by the OY of individual species and objectives a and b above.

(d) Allow foreign participation in the fishery, consistent with objectives (a), (b), and (c), above.

*Alternatives Under Consideration*

In the process of preparing the FMP, the Council considered alternative management options which it expected to lead to the attainment of the plan's objectives. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings or other appropriate means, the advice and recommendations of all interested persons, including States, commercial and recreational fishery groups, and environmental organizations. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation.

(1) *Continue the 1979 FMP*

Under this alternative, the 1979 PMP would be extended to cover the 1980 fishery season. However, a PMP can only regulate foreign fishing. As a result, the Council would not be able to develop regulations to permit the rebuilding of depleted stocks or to control the incidental catch of species of commercial importance to U.S. fishermen (halibut, king crab, and tanner crab).

(2) *Develop an FMP*

The FMP, developed by the North Pacific Fishery Management Council, contains management measures specifying OY for the total fishery (1,559,226 metric tons (mt)), domestic allowable harvest (56,000 mt), reserves (73,324 mt), and the Total Allowable Level of Foreign Fish (TALFF) (1,429,802 mt). We have set optimum yields for Pacific Ocean perch and sablefish at levels which should result in rebuilding these stocks to MSY levels. We set the domestic allowable harvest at a level

consistent with the production expectations of both U.S. harvesters and processors.

In order to prevent the OY from being exceeded without hindering unexpected domestic fishery development (an unanticipated increase in U.S. catching capability and intent), 500 mt or 5% of the OY (whichever is greater) of each species will be held in "reserve" for allocation later in the fishery season on the basis of domestic need. Unless specifically withheld by the National Marine Fisheries Service Alaska Regional Director, acting with the advice of the North Pacific Council, up to 25% of the reserve of each species can be released to TALFF every two months, beginning with the end of the second month of the fishing year. Initial TALFF's for each species were determined by subtracting the sum of domestic allowable harvest and reserve from optimum yield.

Additional management measures selected by the Council included: seasonal area closures for U.S. trawlers in fishing grounds where juvenile halibut are known to concentrate, statistical reporting requirements, and permit requirements and area closures for foreign fishery vessels.

### (3) Areas Closed to Foreign Fishing

Relaxation of closure of the "Winter Halibut-savings Area" to longlining between December 1 and May 31, and of the area around Petrel Banks to foreign trawlers constitute the alternative management measures considered in the FMP development process. Allowance of foreign fishing in these areas during the specified time periods would result in continuation of incidental halibut catches. The catches would have the effect of perpetuating the yield loss to the halibut fishery, which is associated with foreign fishing in these areas. While these areas are known to contain large concentrations of juvenile halibut, quantification of the yield losses for these narrowly defined areas is not possible at this time.

### Summary of Benefits

The optimum yield of 1,559,226 mt set by the 1980 FMP represents an increase of 133,156 mt over the OY of 1,426,070 mt specified in the 1979 PMP. There were also increases in the domestic allowable harvest (46,100 mt), reserves (71,224 mt), and the TALFF (15,832 mt). We have estimated that foreign nations will pay \$11.9 million in vessel and privilege fees to fish in the Bering Sea/Aleutian Island area in 1979.

At present, there is insufficient information to quantify the economic effects of this FMP on U.S. fishermen

and processors. Projections of domestic catches are not reliable for the fishery because there has been only a limited amount of effort directed at the harvesting by U.S. fishermen of groundfish in the Bering Sea/Aleutian Island area. However, the preferential U.S. allocation of groundfish allows opportunity for expansion of U.S. harvests as rapidly as the private sector is willing to invest in the fishery. The U.S. allocation will permit the continued harvest of groundfish, which are used as crab bait, as well as the implementation of pilot projects for food fish production. If these projects are successful, there may be an opportunity for expansion of U.S. exports of seafood products.

Economic benefits also are expected from the rebuilding of stocks to levels of high abundance or to MSY levels. First, there are potential reductions in the cost of harvesting fish because of larger CPUE (i.e., greater productivity). Second, there is a strong consumer demand for halibut products. A rebuilt stock, under proper management, will enable the catch of the fishery to expand and increase the supply of halibut for the U.S. consumer.

A biological benefit of rebuilding depleted fish stocks is the maintenance of a large amount of genetic variability in the stock to increase its chances of adapting to changes in the environment. In addition, there is the benefit of stabilizing the fishable population to reduce the likelihood of sharp yearly variations in the harvest.

### Summary of Costs

The cost of implementing the FMP is projected at \$5.574 million. Of this total, the cost of the foreign fishery observer program of \$370,000 will be reimbursed to the U.S. Treasury by foreign governments. The remaining \$5.204 million is divided between the National Oceanic and Atmospheric Administration (\$493,000), the State of Alaska (\$11,000) and the Coast Guard (\$4.7 million).

### Sectors Affected

The sectors of the Alaskan economy most directly affected by this FMP are domestic fishermen and processors. In addition, the fishing fleets of Japan, Poland, Taiwan, Republic of Korea, and the Soviet Union, which combined may harvest between 92-98 percent of the catch allowed by this FMP, will be affected.

### Related Regulations and Actions

*Internal:* Provisions of the Marine Mammal Protection Act of 1972, (16 U.S.C. § 1361 *et seq.*), have a bearing on this FMP through restrictions or killing

or harvesting seals and sea lions (50 CFR Part 216), which may prey on fish already captured in nets. The FMP for Groundfish in the Gulf of Alaska (43 FR 17242) has implementing regulations designed to minimize the incidental catch of halibut. In addition, the directed catch of halibut is controlled by the Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, 5 UST 5.

*External:* The Alaska Department of Fish and Game and the Alaska Limited Entry Commission issue State regulations which control the harvest of fishery resources in territorial waters (0-3 miles) off the coast of Alaska.

### Active Government Collaboration

We requested comments on this FMP from the Environmental Protection Agency, the Marine Mammal Commission, and the Departments of Agriculture, Interior, State, and Transportation.

### Timetable

NPRM (if FMP is approved)—  
November 1979.

Final Rule—December 1979—January 1980.

### Available Documents

The Draft Environmental Impact Statement and Fishery Management Plan for the Groundfish Fishery in the Bering Sea/Aleutian Island area.

The Draft Regulatory Analysis for the Bering Sea/Aleutian Island Fishery Management Plan of the North Pacific Fisheries Management Council.

The documents may be obtained from the agency contact listed below.

### Agency Contact

Robert A. Siegel  
National Oceanic and Atmospheric  
Administration  
Plan Review Division, F36  
Washington, D.C. 20235  
(202) 634-7449

### DOC—NOAA

Regulations implementing a preliminary fishery management plan for Pacific billfish and oceanic sharks under the Fishery Conservation and Management Act of 1976, as amended.

### Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

### Statement of Problem

*A. Background Information on Fishery Management Plans*

The Fishery Conservation and Management Act of 1976, (FCMA) as amended, established a national fishery

management program for the conservation and management of fishery resources which are subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal State and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program as necessary to prevent overfishing, to rebuild overfished stocks, to ensure conservation, and to realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the FCMA calls for the preparation of fishery management plans (FMP's) by the eight Regional Fishery Management Councils (the Councils) or, under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMP's by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority (a fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics). Enforcement of the FCMA, including the provisions of approved FMP's and promulgated regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The FCMA also states that the Secretary must prepare preliminary fishery management plans (PMP's) when the Secretary of State receives applications from foreign nations for permission to fish in the FCZ, provided that the appropriate Council will not prepare an FMP soon enough to respond to the application. PMP's are implemented by Federal regulations and remain in effect until they are amended or superseded by approved Council FMP's.

The FCMA established seven National Standards to be applied by both the Councils and the Secretary in the preparation and review of any FMP or PMP, and in the promulgation of implementing regulations. The National Standards require that FMP's and PMP's be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states (assigning fair and

equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize conservation and management costs. Optimum yields (OY) is based upon the maximum sustainable yields (MSY) of a fishery, modified by relevant economic, social, or ecological factors. MSY is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP or PMP allows foreign fishing fleets to harvest that portion of the optimum yield of a fishery which U.S. fishermen are unable to catch. In order to participate in a U.S. fishery in the FCZ, a foreign vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

A foreign nation begins to obtain entry into a U.S. fishery by signing a Governing International Fishery Agreement (GIFA) before making formal application for fishing permits. This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the FCMA. Any existing international agreements, other than GIFA's, are considered valid only if they were in effect before the FCMA was enacted and have not expired, been renegotiated, or been negated in any manner. The Secretary of State, in cooperation with the Secretary, determines the allocation of the total allowable surplus that the applicant nation will receive.

#### *B. The Pacific Billfish and Oceanic Sharks PMP*

In 1978, the Secretary prepared a PMP for Pacific billfish and oceanic sharks. However, the regulation of billfishes and sharks is complicated by the directed foreign longline fishery for tuna (a fishery that seeks to harvest tuna with hooks attached to a long rope suspended from buoys) which has been conducted in the Pacific Ocean for many years. The fishery has resulted in the incidental capture of billfishes and sharks because the fishing gear is not capable of selecting only tuna. (Several species of tuna are considered "highly migratory" and are not subject to management under the provisions of the FCMA).

The Administrator for Fisheries approved the original PMP in May 1978 and the proposed regulations were published in July 1978, establishing

optimum yield, U.S. harvesting capacity (expected catch), and the total allowable level of foreign fishing (TALFF) for billfish and oceanic sharks in the FCZ in the Pacific Ocean off the mainland west coast of the United States (excluding the FCZ seaward of Alaska), Hawaii (including the Midway Islands), American Samoa, Guam, and other U.S. possessions in the Pacific Ocean. Management measures in the PMP included requirements for foreign fishing vessels to release all billfish caught in specific geographical areas of the FCZ, limits on the retention of billfish and oceanic sharks in other areas of the FCZ, and data on check-in/check-out reports.

However, the original PMP was never implemented because of objections from American Samoa and the Western Pacific Fishery Management Council. Reviewers claimed that regulations based on the original PMP could disrupt the tuna fishing operations of foreign longliners based in American Samoa. Tuna landed by these vessels supply two canneries at Pago Pago. These canneries are the economic backbone of American Samoa. Wahoo and mahimahi (dolphin fish) also caught incidentally to tuna would have remained in the category of prohibited species in the original PMP. Foreign longliners based in American Samoa, but fishing over large areas of the South Pacific, also deliver wahoo, mahimahi, and billfish, providing additional income for processing plants and foodfish for local consumption.

Another comment we received on the original PMP was that foreign longline vessels have unsophisticated communications systems and may be unable to satisfy the reporting requirements. In addition, reviewers indicated that OY, expected domestic harvest, and TALFF should be revised because of the availability of more recent information on stock conditions and on catch and effort in the FCZ.

The Secretary has prepared an amendment to the original PMP to accommodate the needs of American Samoa. These amendments are discussed in alternative two.

#### *Alternatives Under Consideration*

In the process of preparing a PMP, the Secretary considers alternative management options which are expected to lead to the attainment of the plan's objectives. We considered the following alternatives in developing the amended PMP:

##### *1. Continue the original PMP*

Under this alternative, OY and TALFF for each species would be determined

for the entire FCZ, but non-retention zones (areas where billfish must be returned to the ocean without removing them from the water) would vary in different portions of the FCZ. A single TALFF for the entire FCZ would allow foreign vessels to concentrate effort in areas where the target species are abundant. It could also lead to crowding or to intensified fishing effort.

### 2. Revise the original PMP

This alternative would revise the OY, U.S. capacity, and TALFF and specify the components separately for each of five sub-areas of the FCZ: (1) mainland West Coast, (2) Hawaii, (3) American Samoa, (4) Guam and the Northern Mariana Islands, and (5) the U.S. possessions. In addition, it would establish OY's and TALFF's for wahoo and mahimahi (so that a fishery for those species would be permitted); include the FCZ around the Northern Mariana Islands in the PMP management area; include "reserves" for certain species of billfish in Hawaii, Guam, and the Northern Mariana Islands and for sharks in Hawaii to accommodate the possibility that domestic catches may exceed the estimated levels; and clarify and simplify reporting and inspection requirements for foreign fishing vessels. These are the preferred management measures.

### 3. Prohibit all retention of billfish in the FCZ

Foreign vessels would be required to release all billfish taken incidentally to tuna fishing in the FCZ. This would result in considerable waste of billfish, because most billfish caught by longline are dead when brought to the surface.

### 4. Establish areas closed to those foreign fishing operations which result in the taking of billfish

Tuna fishing would be allowed, provided that the gear was selected and precluded the incidental by-catch of billfish. This would result in a prohibition of foreign longlining for tuna in selected portions of the FCZ.

### 5. Exclude American Samoa from the PMP

Under this alternative, the PMP would not apply in the FCZ seaward of American Samoa. The FCMA requires that foreign vessels obtain permits to fish in the FCZ. If American Samoa were not covered under the PMP and its implementing regulations, there would be a prohibition on foreign longlining. There would be no basis under the FCMA (PMP or FMP) to permit foreign fishing in the FCZ. This would not be

responsive to the special economic and social needs of American Samoa, because it could reduce foreign landings of billfishes, sharks, wahoo and mahimahi caught incidentally to tuna.

### Summary of Benefits

The amended PMP will provide benefits to the economy of American Samoa because of the dependence of its processing plants on foreign catches of tuna, billfish, oceanic sharks, wahoo and mahimahi.

The subarea approach (alternative two) for OY, U.S. capacity and TALFF—as opposed to a single value for the FCZ—takes into account the special concerns of American Samoa by allowing foreign fishing to continue. We set the billfish TALFF for the American Samoa subarea equal to the estimated 1971–1975 average annual catch by foreign longliners (52.6 metric tons (mt)) in that area. In addition, we established TALFF's for wahoo (2 mt), mahimahi (2 mt), and sharks (101.6 mt).

For the 1979–1980 PMP, the expected U.S. domestic harvest of billfish and oceanic sharks is defined as the average annual domestic catch for a specified base year (1976) or the 1971–1975 period plus 10 percent for increased participation by commercial and recreational fishermen. The estimated catch for 1979–1980 is 1,729 mt. The 1979–1980 TALFF for billfish and oceanic sharks has been proposed at 2,261.9 mt, which is below the 1971–1975 annual average foreign catch of 2,537.6 mt.

If foreign fishing vessels catch the proposed TALFF (2,261.9 mt for all-species), the estimated revenues to the U.S. Treasury from these foreign fishing fees could reach \$68,000.

### Summary of Costs

Enforcement costs for the PMP will vary with the amount of effort and the pattern of foreign fishing in the FCZ. Initially, enforcement in 1979–1980 will be carried out with available personnel from the National Marine Fisheries Service (NMFS) and the Coast Guard. We have estimated that total observer enforcement costs, including salaries, premium pay, travel, training and equipment under the original PMP at \$185,000 per year. This estimated also applies to the amended PMP for 1979–1980. However, the final cost may be lower if the foreign fishing effort is below current estimates. We do not expect there to be any compliance costs imposed on the private sector of the U.S. economy.

If there is a significant increase in foreign effort in 1979–1980 compared to 1978–1979, we may need more active

enforcement of the PMP. This could require up to 1,450 hours of Coast Guard aerial patrols, 430 days of Coast Guard vessel patrols, and 10 person-years (Coast Guard and NMFS), at an estimated annual cost of \$300,000.

In addition, NOAA/NMFS and other Federal agencies (e.g., Department of State) will incur administrative costs in processing foreign fishing requests. NOAA/NMFS also will incur costs for processing, storing, and analyzing data from foreign vessels to ensure that the TALFF's are not exceeded. We expect these administrative costs to range from \$5,000 to \$10,000.

### Sectors Affected

Sectors of the U.S. economy that the PMP will most directly affect are commercial and recreational fishermen in American Samoa, Guam, Hawaii, the mainland west coast of the United States, and the Northern Mariana Islands. In addition, it will affect processors and foreign longliners based in American Samoa.

### Related Regulations and Actions

*Internal:* None.

*External:* The amendments to the original PMP would be consistent with the approved State Coastal Zone Management Plans of California and Hawaii.

### Active Government Collaboration

We requested comments on the amended PMP from: Western Pacific and Pacific Fishery Management Councils; Governments of American Samoa, Guam, and the Northern Mariana Islands; States of California, Hawaii, Oregon, and Washington; Department of State, Transportation, and Interior; Environmental Protection Agency; Pacific Marine Fisheries Commission; and various individuals and organizations.

### Timetable

Final Rule—November 1979–January 1980.

### Available Documents

First Supplement to the Final Environmental Impact Statement/ Preliminary Fishery Management Plan for Pacific Billfish and Oceanic Sharks.

These documents may be obtained from the agency contact listed below.

### Agency Contact

Robert A. Siegel, Economist  
National Oceanic and Atmospheric Administration  
Plan Review Division, F36  
Washington, D.C. 20235  
(202) 634-7449

**DOC-NOAA—Office of Coastal Zone Management****Channel Islands Marine Sanctuary regulations****Legal Authority**

Marine Protection, Research and Sanctuaries Act of 1972, § 302(f), 16 U.S.C. § 1432(f).

**Statement of Problem**

The waters immediately around the northern Channel Islands and Santa Barbara Island support an extraordinary assemblage of marine mammals, numerous seabirds including the endangered brown pelican, and important fishery resources including kelp and shellfish. Until recently, these waters have been left relatively untouched by human activity because of their distance from the populous mainland. Use of the Santa Barbara Channel is increasing, however, thus placing additional pressures on these natural resources.

Title III of the Marine Protection, Research and Sanctuaries Act of 1972, (16 U.S.C. §§ 1431-1434) authorizes the Secretary of Commerce, after consultation with appropriate Federal agencies, and with Presidential approval, to designate ocean areas having distinctive conservation, recreational, ecological, or aesthetic values as marine sanctuaries and issue necessary and reasonable regulations to protect the resources in these areas.

Based on different recommendations submitted by the Resources Agency of the State of California, the National Park Service, and the County of Santa Barbara, and on hearings held by the California Coastal Commission, the Office of Coastal Zone Management (OCZM) of the National Oceanic and Atmospheric Administration (NOAA) is considering designating a marine sanctuary in the waters around the northern Channel Islands and Santa Barbara Island. A Draft Environmental Impact Statement (DEIS) is being prepared on the proposed action. Consultations on the DEIS with other Federal agencies may affect the final scope and content of the regulations. The regulations discussed here represent NOAA's current position on the regulations which would be necessary in the proposed sanctuary.

Presently the area likely to be described in the DEIS as the preferred alternative for a sanctuary extends six nautical miles (nmi) (11.1 kilometers) seaward from the mean high tide line around the Islands. The following activities which have potentially harmful impacts on the resources of the

area are likely to be proposed for regulation:

- oil and gas operations
- discharging or depositing any substance into the sanctuary waters
- alteration of or construction on the seabed
- navigation and operation of vessels (other than fishing and kelp harvesting vessels) and aircraft overflights below 1000 ft. (305 meters)
- removal or otherwise deliberate harm to cultural or historical artifacts.

Although many agencies currently regulate or have authority over aspects of these activities and over the natural resources of the waters, the focus of their responsibilities differs from that of the marine sanctuary program, which is to protect the area's ecosystem. Further, individual agencies evaluate separately the impacts of various activities which might affect the resources, and cumulative impacts may be overlooked. Moreover, without marine sanctuary regulations, certain activities which could potentially be damaging, such as the disposal of trash in sanctuary waters, are not subject to any regulatory authority. Finally, as a result of designation as a marine sanctuary additional enforcement resources could become available for the area.

**Alternatives Under Consideration**

The major alternatives are to (1) designate or (2) not designate a marine sanctuary. Impacts of designation are explained above. Non-designation could result in environmental degradation because of the projected increase in use of these waters and the lack of any specific protection mechanism focused on this area. A number of restrictions applying under existing State and Federal laws would continue to apply to the activities in question (see Related Regulations and Actions), however, lack of coordination could reduce their effectiveness.

Another alternative would be to designate a smaller or larger sanctuary than that proposed, which could range from a sanctuary extending 3 nmi from the limit of the territorial waters around the Islands to an area including the entire Santa Barbara Channel and extending 12 nmi around the Islands. Within any area proposed, there are a number of alternatives as to the activities subject to regulation and the nature of the restriction placed on each activity.

**Summary of Benefits**

Marine sanctuary designation would result in enhanced preservation of ecological, recreational and aesthetic resources, particularly endangered

species, marine mammals and birds, and the habitats of these populations.

Fishing and recreation activities, two major sources of income for the region, also depend on the continued health of the marine resources of the area. In 1975 commercial fishermen landed 12,248,000 pounds of fish and shellfish from the waters around the northern Channel Islands and Santa Barbara Island. The California Department of Fish and Game reported that 187,500 angler days occurred in the Channel (from partyboats) in 1970 with a catch of 517,558 fish and estimated and related expenditures of \$2,294,000. The natural resources of the island waters are also a factor in attracting tourists other than recreational fishermen to the Santa Barbara area, but that factor cannot be easily quantified. The Santa Barbara Chamber of Commerce estimated the total tourist expenditures in the County at \$60,534,520 in 1973. Most of these expenditures occur on the mainland rather than island, coast, and waters. The designation of a marine sanctuary in these waters would help assure protection for the natural resources upon which these economic activities partially depend.

The proposed prohibition of petroleum operations on leases acquired on or after the effective date of the sanctuary designation will ensure a partial buffer of 6 nmi between petroleum development and the nearshore resources, to provide increased time and distance for natural forces to weather and volatilize oil spills and for at-sea cleanup and oil spill containment. The buffer also reduces the visual and acoustic disturbances of petroleum development which affect both the marine mammals and seabirds and the aesthetic qualities of the Islands.

The proposed prohibition of discharges and littering will enhance the area's aesthetic features and will reduce the threat to living marine resources in the sanctuary from such deposits. The suggested restrictions on alteration of or construction on the seabed and on navigation and operation of vessels and aircraft will reduce disturbance of marine mammals and seabirds which could affect their behavior and possibly their reproductive success. The proposed prohibition on removing or harming historical or cultural artifacts will preserve these resources for future study.

**Summary of Costs**

These proposed regulations will impose minimal costs except for those that can be associated with the prohibition of oil and gas operations on tracts leased after the effective date of

the regulations. The extent of these costs is unclear for the following reasons:

First, reliable data on the hydrocarbon reserves within the sanctuary is not available. Approximately half of the proposed sanctuary has never been considered for leasing and NOAA has no resource estimates in these areas. In the remaining half, there are 43 unleased tracts, 24 of which were considered for Lease Sale #48 and then withdrawn (Leases in the other 19 tracts have expired due to insufficient attempts at development—possibly indicating low resource potential). For the 24 withdrawn tracts, the U.S. Geological Survey has estimated reserves of 5.7 million barrels of oil and 8.9 billion cubic feet of gas, but this was before revising its estimate for the entire Lease Sale #48 area downward by about 84 percent. These figures are the only available indication of the total value of the area.

Secondly, the extent of which any resources, whatever their potential, will be foregone as a result of the proposed prohibition is questionable. At least some of the available reserves could be recovered by slant drilling from outside the sanctuary despite any prohibition. Eleven of the forty-three currently leased tracts fall only partially within the Sanctuary. Furthermore, in many areas where recovery will be infeasible under the prohibition, it would also be blocked by other agencies. The Department of the Interior has already withdrawn 24 tracts, and the number of tracts it would actually offer for lease cannot be predicted. The State of California prohibits oil and gas development within its waters around four of the five islands in the proposed sanctuary.

Finally, to the extent that the capital available for the development of oil and gas reserves in the Southern California Bight can be directed to other tracts outside the sanctuary, the costs of lost profits attributable to the prohibition would be minimal. The reserves in the sanctuary would not necessarily be unavailable in the future, and their value should increase.

#### Sectors Affected

##### *Federal and State Government*

The primary sectors affected are the Federal Government and the State of California because of the loss of possible revenue from lease sales. It is likely that the industry will not bid on affected tracts located completely within the sanctuary if those tracts are offered in future lease sales and will either not bid or will offer reduced bids

on tracts located partially within the sanctuary. As we explained above, the actual loss of revenues cannot be estimated at this time. The Department of Interior estimated the social value of the 24 tracts removed from Sale 48 to be \$1 million based on the reduced U.S. Geological Survey (USGS) resource estimates. The social value is the saving gained by producing oil domestically rather than importing it. The Federal government obtains most of these savings through leases, royalties, and taxes.

##### *Industry*

The petroleum industry would forego the profits it could otherwise realize from the development of the affected tracts. Companies that have leased tracts in the area include Texaco, Chevron, Exxon, Mobil, Continental, Union, Phillips, and Champlin oil companies. However, as discussed above, in the short term this prohibition will impose only minor losses, if any, on the industry, because operators can channel their capital for exploration and development to other areas of the Southern California Bight.

Finally, development on tracts and portions of tracts within six nmi of the Islands which are already leased would have to meet certain provisions for oil spill containment equipment in excess of those imposed by USGS operating order #7. However, since it is likely that in many cases the California Coastal Commission would also require identical equipment, NOAA's minimum may not impose any additional cost.

##### *Related Regulations and Actions*

*Internal:* None.

*External:* A number of State and Federal agencies have regulatory authority over the activities and resources subject to the proposed regulations. The major ones are:

##### *State*

(A) The California Coastal Act of 1976, (Cal. Publ. Res. Code § 3000 *et seq.*) establishes comprehensive policies for the protection of coastal resources and the management of orderly economic development. These policies apply to activities within State waters and to Federal activities and Federally licensed or funded activities with requisite effects on the coastal zone.

(B) The California Fish and Game Code, § 1580 *et seq.*, establishes ecological reserves in a portion of the proposed sanctuary. Within these reserves, the State can control activities that threaten the resources.

(C) The Water Quality Control Act, (Cal. Water Code § 13300 *et seq.*)

regulates water quality in state waters, particularly in Areas of Special Biological Significance which are designated within 1 nmi from the islands.

(D) The Cunningham—Shell Tidelands Act, as amended (Cal. Publ. Res. Code § 6850 *et seq.*), establishes State regulation of offshore oil and gas development. The California legislature has created an oil and gas sanctuary generally prohibiting oil and gas development within 3 nmi of the islands, except in Santa Barbara.

##### *Federal*

(A) The Fishery Conservation and Management Act, (16 U.S.C. § 1801 *et seq.*) provides for fishery management between 3 and 200 miles.

(B) The Endangered Species Act, (16 U.S.C. §§ 1531-1543) provides protection for listed species, of which several are located within the proposed sanctuary.

(C) The Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) provides for the protection and management of marine mammals.

(D) The Clean Water Act, (33 U.S.C. § 1342) authorizes the Environmental Protection Agency to issue National Pollution Discharge Elimination System (NPDES) permits regulating the discharge of any pollutant into navigable water from a point source.

(E) The Outer Continental Shelf Lands Act (43 U.S.C. § 1331 *et seq.*) gives the Secretary of the Interior primary responsibility for managing OCS oil and gas activities while requiring a variety of measures to mitigate impacts and protect living marine resources.

##### *Active Government Collaboration*

OCZM has worked closely with the State on the development of this proposal. OCZM wrote an Issue Paper at the request of the State, and is proceeding further to write a DEIS on the proposal as the direct result of the recommendation of the State. Representatives from State and local government were sent copies of the Issue Paper and preliminary draft chapters of the DEIS and will be sent the DEIS, the NPRM, and all other applicable documents. OCZM is consulting with the State on the feasibility of joint State/Federal sanctuary management.

OCZM held two meetings with Federal agencies on January 23 and April 13 in accordance with the new regulations of the Council on Environmental Quality to determine the issues involved. OCZM is inviting the Departments of Energy and Interior, the Environmental Protection Agency, the Coast Guard, and the Navy to be

cooperating agencies in the preparation of the DEIS. The Department of Energy has already agreed.

OCZM regulations require active consultation with all relevant agencies throughout the remaining process (15 CFR 922.24(b), 922.25, 922.26(a)—44 FR 44831, July 31, 1979).

#### Timetable

NPRM—November, 1979.  
 Notice of Availability of DEIS in Federal Register—November, 1979.  
 Hearings in California—December, 1979.  
 Public Comment—60 days following issue of NPRM and DEIS.  
 Notice of Availability of FEIS—April, 1980.  
 Final Rule—April, 1980.

#### Available Documents

Issue Paper on Possible California Marine Sanctuary Sites, distributed in December 1978, is available from the agency contact identified below.

Transcripts of the following meetings are also available.

Public workshop in Santa Barbara, California—April, 1978.

Public Comment on Issue Paper (California Coastal Commission hearings)—February, March, April, 1979.

Preliminary Draft Chapters "Description of the Affected Environment (Sec. E)" and "Status Quo (Sec. F-1, a & b)" of the DEIS dated May 24 are available from the agency contact identified below.

#### Agency Contact

JoAnn Chandler  
 Acting Director, Sanctuaries Program  
 Office of Coastal Zone Management  
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## DEPARTMENT OF ENERGY

Buildings and Community Systems Division

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Neighborhoods, Voluntary Associations and Consumer Protection

Energy performance standards for new buildings

#### Legal Authority

Energy Conservation Standards for New Buildings Act of 1976, 42 U.S.C. §§ 831-8840; Department of Energy Organization Act, § 304, 42 U.S.C., § 7101, *et seq.*

#### Statement of Problem

A major goal of the National Energy Plan (which by law DOE must submit to Congress annually) is to reduce our dependence on uncertain and expensive foreign oil supplies by reducing the growth in demand for energy used in buildings. The Department of Energy (DOE) and the Department of Housing and Urban Development (HUD) are pursuing this goal through a number of conservation programs. The intent of this regulation is to reduce the amount of energy consumed in new buildings by requiring construction which would make them energy efficient. One-third of all energy consumed in the U.S. is now used in buildings, and inefficient building designs and equipment waste about forty percent of this energy.

The regulations DOE is developing will set energy consumption "budget" levels which buildings must be designed to meet. Energy consumption will be measured on the basis of building design, in terms of consumption per square foot of floor space per year. These "design energy budgets" will take into account the differences in energy consumption required by climate and by the different functions of buildings.

Current plans call for HUD to implement and administer the regulations DOE will issue.

#### Alternatives Under Consideration

According to the legislation the requirements of the Building Energy Performance Standards permit consideration of few alternatives. However, these regulations are performance-oriented, and adapt to differences in regional conditions and building functions. The regulation does not require certain construction techniques. This is an innovative "alternative" approach, which will allow the private sector a great deal of flexibility.

The main alternatives which we are now considering within this program deal with (1) the way in which energy use is measured, and (2) the method of implementation.

The energy consumption measured at the building site does not indicate the loss which occurred in transmitting the energy to the building site. The proportion of this loss varies by energy type. It takes about seven percent more energy to deliver one British Thermal Unit (Btu) of oil to a building than it does to deliver one Btu of natural gas. Almost two Btu's of energy are lost in delivering one Btu of electricity. These figures are national averages, and they can be higher or lower for specific localities, depending on fuel

availabilities, transportation distance, and the demand for energy at each locality. Basing design energy budgets only on the energy consumption at a site would overlook a significant amount of energy consumption.

An alternative is to relate the energy that is actually used to the amount of energy that is consumed at the building site, and to set standards based on the actual use. This would be done through the use of Resource Utilization Factors (RUFs) to account for energy losses, and Resources Impact Factors (RIFS) to account for economic and environmental impacts. These factors would be applied to the energy used to give an adjusted total energy use.

Another alternative would be to relate the use of each type of energy to the "marginal cost" of that type of energy, and to set standards based on marginal cost. (Marginal cost includes the costs of added energy facilities, and the loss of energy involved in conversion to different forms and in transmission or transportation to the point of use.) It is easier to determine marginal costs for specific localities than to get RUF and RIF values.

Alternative implementation methods range from a voluntary (no Federal sanctions) approach through a mandatory (strong sanction) approach. Research on the effectiveness of different implementation methods is underway.

#### Summary of Benefits

Buildings which meet these energy budgets will consume about 35% to 40% less energy than recently constructed buildings. We expect this to result in an energy savings of 3.2 quadrillion Btu's per year by the year 2000, and cumulative savings of 21 quadrillion Btu's by the year 2020. About 60 quadrillion Btu's are now used annually in the U.S. (A quadrillion Btu is 10 British Thermal Units. A Btu is the amount of energy required to raise one cubic centimeter of water one degree fahrenheit at specified pressure and temperature levels.) The standards that we will propose may, by 1990, increase the real Gross National Product by 0.1 percent, increase employment by 1.0 percent, and improve the balance of trade by 5 percent. These effects are primarily the result of increased energy savings and reduced oil imports.

#### Summary of Costs

Construction costs for all new buildings will increase slightly. For new commercial buildings, we expect the increase to be about 2.5 percent. The cost of a typical residential building will increase slightly; the cost of a 1,640

square foot one-story home will increase, on the average, about \$1200. However, the energy savings that are achieved under the regulation will more than offset these increased construction costs. The added cost to enforce the standards may be about \$22 million per year. An estimated \$38 million per year is currently being spent to enforce existing energy standards for buildings. These existing standards would remain in effect.

#### Sectors Affected

The Standards will apply to the building industry. They will also affect the general public, because the cost of constructing new buildings will increase by the amounts we estimated above. There may be an increase in the resale price of existing buildings, since these buildings compete in the market with new buildings that will become more expensive.

If sanctions are provided, they may involve the loss of Federal benefits to governmental jurisdictions, rather than Federal penalties to builders. Therefore, with a sanction, the rule could directly affect all governmental jurisdictions that have new building activity. These include the 50 States, four territories, 16,000 permit issuing jurisdictions within the states and territories, and a large but unknown number of local jurisdictions that do not control construction activity within their own boundaries.

#### Related Regulations and Actions

*Internal:* DOE is developing a Model Building Code. This model code specifies detailed requirements for building components (e.g., "install six inches of attic insulation") that are consistent with the performance standards under development.

*HUD:* Minimum Property Standards for One and Two Family Dwellings, Department of Housing and Urban Development (HUD); Minimum Property Standards for Multifamily Dwellings, HUD Handbook 4910, Revision 5, April 1977; Proposed Increase in Thermal Insulation Requirements for the Minimum Property Standards for One and Two Family Dwellings, 43 FR 17371-17374, April 24, 1978; Farmers Home Administration, Form 424.1, 7 CFR 1804, Subpart A, Appendix D, Construction Standards.

*External:* None.

#### Active Government Collaboration

The Department of Energy, The Department of Housing and Urban Development, and the National Bureau of Standards are participating in

activities related to the development of these regulations.

#### Timetable

- NPRM on standards (DOE)—fourth quarter 1979.
- Final Rule on standards (DOE)—February, 1980.
- Final Rule effective—60 days after we issue the final rule.
- NPRM on implementation and enforcement (HUD)—fourth quarter 1979.
- Public Comment—for at least 60 days following NPRM.
- Final Rule on implementation and enforcement (HUD)—second quarter 1980.
- Regulatory Analysis—available upon publication of the DOE NPRM.

#### Available Documents

- Phase One/Base Data for the Development of Energy Performance Standards for New Buildings (Final Report), PB-286 898;
- Climatic Classification, PB-286 900;
- Data Collection, PB-286 902;
- Residential Data Collection and Analysis, PB-286 899;
- Data Analysis, PB-286 901;
- Building Classification, PB-286 904;
- Sample Design, PB-286 903, January 12, 1978.

Documents are available from the Agency contact listed below.

#### Agency Contact

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##### DOE—Conservation and Solar Energy

Energy conservation program for consumer products (other than automobiles)

#### Legal Authority

Title III, Part B of the Energy Policy and Conservation Act (P.L. 94-163) as amended by the National Energy Conservation Policy Act (P.L. 95-619)

#### Statement of Problem

Major consumer products now being manufactured are less energy efficient than they could be. The Department of Energy's (DOE) Energy Conservation Program for Consumer Products (other than automobiles) seeks to reduce energy consumption (or slow down increases in energy consumption) by improving the operating efficiencies of major household consumer products. The Energy Policy Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), establishes thirteen product categories for review. These product categories are refrigerators and refrigerator-freezers, freezers, dishwashers, clothes dryers, water heaters, room air conditioners, home heating equipment (not including furnaces), television sets, kitchen ranges and ovens, clothes washers, humidifiers and dehumidifiers, central air conditioners, and furnaces.

The EPCA mandates that DOE develop test procedures for determining compliance with any performance standards it may ultimately issue for the products listed above. If DOE issues standards, these standards will establish the minimum level of energy efficiency required to be achieved by the covered product, but will not prescribe the methods, designs, processes, or materials to be used to achieve the particular efficiency level. This will minimize Federal intrusion into the marketplace. The EPCA further directs that any standards DOE issues be designed to achieve the maximum improvement in energy efficiency which is technologically feasible and economically justified. Manufacturers will be required to certify that their products are in conformance with the standards by testing them in accordance with DOE test procedures before they can place such products on the market.

#### Alternatives Under Consideration

DOE's analysis will examine the implication of setting standards on a regional rather than a national basis. Regional standards would require greater energy efficiency in areas where products were used more intensively. For example, a more stringent standard for air conditioners could be justified in the South than in New England. DOE believes, however, that this approach would be unworkable and unduly burdensome.

DOE's analysis will also consider what would happen if no mandatory standards were set. Under EPCA the Federal Trade Commission (FTC) will institute a program of mandatory

efficiency labeling of appliances. However, DOE is mandated to set minimum efficiency standards regardless of the effectiveness of the FTC labeling program.

#### Summary of Benefits

Implementation of Federal standards for energy efficiency will assure that new consumer products are built in a way which reflects current energy costs, so that these products will use less energy (per product). DOE expects these more efficient products to replace existing units gradually over a 15 year period. As new units replace old, national energy savings will increase. The total energy consumed by consumer products (other than automobiles) will of course also be affected by the numbers of products in use.

#### Summary of Costs

The statute requires that standards issued under this program be economically justified. Thus, while the program may increase the purchase price of new consumer products, energy savings will offset any increased purchase price. This does not mean that energy efficiency improvements will necessarily be so great as to offset future increases in energy costs.

#### Sectors Affected

This program will affect manufacturers of consumer products and purchasers of these products. Utilities will sell less energy for use in each product as the efficiency of the stock of appliances is improved; however, total sales will also depend on the number of appliances in use.

#### Related Regulations and Actions

*Internal:* Energy Performance Standards for New Buildings; Residential Conservation Service Program. See entries elsewhere in this calendar.

*External:* Minimum Property Standards for One and Two Family Dwellings, Department of Housing and Urban Development.

#### Active Government Collaboration

DOE and the FTC have collaborated in the development of test procedures for these products.

#### Timetable

- NPRM for nine products, and draft regulatory analysis—March 1980.
- Draft Environmental Impact Statement or Environmental Assessment—March 1980.
- Public Comment—following NPRM.
- NPRM for four products, and draft regulatory analysis—fourth quarter,

1979.

- Public Comment—following NPRM.
- Final Rule for nine products, and final regulatory analysis—December 1980.
- Final Rule for four products, and final regulatory analysis—November 1981.
- Final Rule effective—not earlier than 180 days after we issue final rules.

#### Available Documents

##### Test Procedures:

1. Refrigerators, Refrigerator-freezers—42 FR 46140, September 14, 1977.
2. Freezers—42 FR 46140, September 14, 1977.
3. Dishwashers—42 FR 39964, August 8, 1977.
4. Clothes Dryers—42 FR 46140, September 14, 1977.
5. Water Heaters—42 FR 54110, October 4, 1977.
6. Room Air Conditioners—42 FR 27896, June 1, 1977.
7. Home Heating Equipment—43 FR 20108, May 10, 1978.
8. Television Sets—42 FR 46140, September 14, 1977.
9. Kitchen Ranges and Ovens—43 FR 20108, May 10, 1978.
10. Clothes Washers—42 FR 40802, September 28, 1977.
11. Humidifiers and Dehumidifiers—42 FR 55599, October 18, 1977.
12. Central Air Conditioners—42 FR 60150, November 25, 1977.
13. Furnaces—43 FR 22410, May 10, 1978.
14. Sampling Requirements of Consumer Products Test Procedures—44 FR 22410, April 13, 1979.

##### Standards:

ANPRM Regarding Energy Efficiency Standards for Nine Types of Consumer Products—44 FR 49 (January 2, 1979).

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#### DOE—Economic Regulatory Administration

#### Amendments to Puerto Rican naphtha entitlements regulations

#### Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

#### Statement of Problem

During the 1950's and 60's the Federal Government and the Puerto Rican government encouraged the development of a refining and petrochemical industry in Puerto Rico. Commonwealth Oil Refining Company (CORCO), Phillips, Sun, and Union Carbide were among the major firms which invested large amounts of capital in refinery facilities, based on the tax relief afforded by the Puerto Rican government and the allocation of substantial quantities of low cost foreign crude oil and naphtha (a volatile, colorless, distillate product between gasoline and refined oil) by the Federal Government. Both naphtha and crude oil are "feedstocks" convertible into one or more end products in the process of refinery operations and petrochemical production.

Two major considerations governed the joint policy of the Puerto Rican and the Federal Government towards the establishment of this refining capacity. First, the policy was based on the availability of low-cost imported feedstock, particularly naphtha, which provided a cost advantage over petrochemical producers on the mainland. This advantage was needed to offset the higher shipping and other costs of starting up the industry in the relatively underdeveloped economy of Puerto Rico. A second major consideration was that the new refinery facilities would expand employment and provide Puerto Rico with fuel for manufacturer, transportation, and agriculture.

Since the 1960's, the petrochemical industry in Puerto Rico has grown to such an extent that it now contributes greatly to U.S. petrochemical capacity and to the economy of Puerto Rico. In 1977, petroleum related industry in Puerto Rico contributed more than \$2 billion to the island's economy, approximately one-third of its total income. In addition, 10 percent of U.S. petrochemical output is now located in Puerto Rico.

Despite these gains, Puerto Rican oil refineries have been severely affected by the world wide increase in the price of imported crude oil, coupled with the imposition of price controls on domestic crude oil by the Federal Government.

The combination of soaring prices for imported naphtha and crude oil, joined to Federal regulatory policy which enabled mainland refiners to purchase cheaper domestic crude oil, has reversed the feedstock cost advantage that the Puerto Rican petrochemical industry formerly enjoyed. Mainland competitors now pay less for feedstocks than do Puerto Rican refiners.

To lessen the competitive disadvantage to Puerto Rican companies of higher feedstock costs, the Federal Energy Administration (FEA) amended the entitlements program on July 20, 1976, to permit Puerto Rican petrochemical producers to receive entitlement benefits for imported naphtha feedstocks. (An "entitlement" is a credit given by DOE to a refiner, and is equivalent to the difference between the average (volume weighted) delivered cost per barrel of imported crude and stripper crude, and the average (volume weighted) delivered cost per barrel of so-called "old" oil, i.e., oil which is the lesser of 1972 or 1975 production on a property, reduced by a decline factor.) The entitlement credit, in effect, reduces the price of purchased feedstocks. FEA determined that it would be inappropriate to grant the full crude oil entitlement benefit to naphtha imports in months when the differential between the prices of imported and domestic naphtha is less than that month's per-barrel entitlement value. Accordingly, the rules the FEA adopted tie the entitlement credit for naphtha imported into Puerto Rico to the difference between the average (volume weighted) cost for imported naphtha and an imputed domestic naphtha price. This imputed value is set at 108 percent of the average (volume weighted) cost of crude oil to refiners. (It is necessary for the government to impute this price because very little naphtha is sold domestically.) The maximum entitlement value that can be received is still limited to the actual per-barrel entitlement value of the crude oil.

These rules are now the responsibility of the Department of Energy (DOE), and are administered by the Economic Regulatory Administration (ERA) within DOE. DOE believes that two factors in the current regulations are causing problems: (1) the naphtha entitlement value is limited to a crude oil entitlement value, and (2) the factor used to impute the domestic naphtha price is too low. FEA never expected that it would need to grant more than a full crude oil entitlement, since, historically, world naphtha prices have paralleled crude oil prices. However, during the last year the prices for

imported naphtha have increased much faster than those for crude oil. Further, ERA's review of current data on naphtha prices and crude oil costs shows that the factor presently used to impute the domestic naphtha cost is much too low. As a result of these factors, approximate feed-stock cost equalization (the goal of the entitlements system) is not given to firms that import naphtha at their current prices.

In recognition of the problems facing the petrochemical industry in Puerto Rico, DOE's Office of Hearings and Appeals (OHA) issued, on May 16, 1979, a proposed Decision and Order which would have made an exception to existing rules to provide relief for a period of six months to those petrochemical companies in Puerto Rico that import naphtha. This interim relief was proposed in order to provide ERA with sufficient time to address these issues through the rulemaking process. The relief OHA proposed would have given two entitlements for each barrel of imported naphtha used in Puerto Rican petrochemical plants. On August 15, 1979, OHA decided to reverse their earlier finding, based upon their belief that the Puerto Rican petrochemical industry was not experiencing extraordinary financial difficulties which required the immediate attention of DOE. Thus, they recommended that the difficulties described by the petitioners be handled through the rulemaking process.

#### Alternatives Under Consideration

DOE will consider several options for better calculating the imputed cost of domestically produced naphtha. The cost of naphtha to the mainland domestic petrochemical industry is a central issue in determining the appropriate level of price protection that should be afforded through the entitlement program to maintain a competitive petrochemical industry in Puerto Rico. These Puerto Rican producers find it difficult to compete with mainland domestic firms because these mainland firms have access to naphtha produced from lower cost domestic crude oils.

The possible approaches to imputing a domestic naphtha price that we will examine include:

- using the current approach of imputing a price based on domestic crude oils, but periodically changing the factor to reflect changes in world market naphtha prices;
- basing the imputed naphtha price on the prices in alternative but related markets, such as the market for

unleaded regular gasoline, jetfuel, or heating oil;

- using the current approach, but comparing international naphtha prices to international costs of low-to-medium sulfur crudes rather than domestic crude costs in setting an imputed cost factor.

In addition to examining changes in the ways of calculating the imputed cost of domestically produced naphtha, DOE is considering the possibility of removing the current restriction on a naphtha entitlement value. Currently, the naphtha entitlement cannot exceed the value of a crude oil entitlement. In light of the increasing prices of naphtha worldwide, this may no longer be reasonable.

#### Summary of Benefits

These proposals should increase the ability of the Puerto Rican petrochemical industry to compete with petrochemical producers located on the mainland. The Puerto Rican petrochemical industry maintains that if no regulatory changes are made to equalize their naphtha costs with those of firms operations on the Gulf Coast, they will be forced either to seriously trim their operations or to incur large operating losses. In fact, a major Puerto Rican petrochemical plant, Puerto Rican Olefins, has already closed. As we formerly stated, the development of refining and petrochemical facilities has had a great impact upon the economy of Puerto Rico. Thus, the proposed changes would have a direct positive effect on Puerto Rico's entire economy.

The proposals should reduce the costs of naphtha-derived petrochemicals to U.S. consumers by a small amount.

#### Summary of Costs

None of the proposed changes to the entitlements program will increase ERA's compliance or administrative costs. There will be no added reporting requirements for the petroleum industry. However, by providing larger entitlements benefits to naphtha, credits available for oil are reduced. This would raise the price of oil products to U.S. consumers by a very small amount.

An increased naphtha entitlement value might also have the adverse effect of increasing the price of naphtha in the world marketplace.

#### Sectors Affected

The Puerto Rican petroleum industry would be most directly affected.

Domestic refiners and consumers of petrochemicals and other oil producers will be affected indirectly.

**Related Regulations and Actions**

None.

**Active Government Collaboration**

None.

**Timetable**NPRM—Draft Regulatory Analysis—  
fourth quarter, 1979.Public Comment—60 days following  
NPRM.

Final Rule—first quarter, 1980.

Final Rule effective—60 days after it  
is issued.**Available Documents**

None.

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**DOE—ERA****Amendments to the emergency provisions of the crude oil buy/sell program****Legal Authority**Emergency Petroleum Allocation Act  
of 1973, 15 U.S.C. 751 *et seq.***Statement of Problem**

The crude oil buy/sell program is designed to implement provisions of the Emergency Petroleum Allocation Act of 1973 which require the protection of the competitive viability of small refiners. The program requires the fifteen major, integrated refiners (i.e., refiners with integrated systems of exploration, production, transportation, and marketing) to sell crude oil to small refiners. The size of the major refiners enables them to obtain access and favorable terms in negotiating for oil supplies. By contrast, small refiners lack access to adequate supplies of domestic and foreign crude oil and have difficulty obtaining desirable terms.

Under the terms of this program, DOE has made emergency allocations of crude oil totalling over 21 million barrels to small refiners during the first eight months of 1979. These allocations were required by the weak position of the small refiners in the market and by the continued tightening of world crude oil supplies. DOE has received reports from many small refiners that their contracts for crude oil supply have been broken and that they were unable to obtain enough foreign crude oil at any price. Thus, the crude oil buy/sell program is

needed to maintain the competitive position of the small refiners.

At the same time, the fifteen major refiners, required to sell oil under the program, contend that the emergency allocations have caused them undue hardship. They advance two principal objections against the present administration of the program. First, the major refiners contend that the present method of determining the price at which oil is to be sold to small refiners prevents them from recovering their full costs of acquiring that oil. Under the present pricing system, refiner-sellers may only charge the average weighted landed cost of crude oil (i.e., the average price of oil purchased during the month of sale, both imported and domestic). This pricing scheme does not reflect the actual cost of crude oil purchases in periods of rapidly escalating prices, because supplies must often be replaced at much higher costs. Second, refiner-sellers state that emergency allocations have required them to reduce output from their refineries. The major refiners have been compelled to absorb the expense of unused refinery capacity.

The crux of the problem is to maintain the crude oil buy/sell program, while finding a way to alleviate the burdens on the major refiners that we have described. There appears to be a need to distribute sales obligations in a more equitable manner, and to allow refiner-sellers to charge prices which are closer to the market rate.

**Alternatives Under Consideration**

DOE has proposed two amendments to the crude oil buy/sell program. One of these amendments would expand the classification of refiner-sellers under the program to include all refiners with refining capacity in excess of 175,000 barrels per day. There are seven large "independent" refiners that fall into this classification. Including the large independent refiners in the crude oil buy/sell program would increase the number of refiner-sellers from 15 to 22 (15 major refiners plus 7 large independent refiners), thereby distributing the sales obligations of the program among a greater number of participants. Second, DOE proposed that refiner-sellers be allowed to charge the actual landed cost of crude oil to refiners with a refining capacity in excess of 50,000 barrels a day (B/D) for emergency allocations only. Refiner-buyers with a refining capacity less than 50,000 B/D would continue to pay the weighted average price.

DOE is exploring the following range of alternatives in relation to a pricing mechanism which would reduce

burdens the program imposes on major refiners:

(a) *No Action*. We could keep the present pricing mechanism, charging refiner-sellers the monthly weighted average landed cost. This option would be reasonable if shortages of crude oil supply disappeared and the rapid escalation in spot market prices eased.

(b) *Other Means of Calculating Price*. We could attach a surcharge handling fee to the current weighted average cost of crude oil sold under the buy/sell program. The current handling fee (paid by buyers to sellers) is \$0.05 per barrel; the handling fee under standby emergency allocation regulations is \$0.25 per barrel.

(c) *Different Basis for Pricing Cutoff*. We could redefine the separate pricing scheme for refiner-buyers with a refining capacity of more than 50,000 barrels per day to cover refiners with larger refining capacities.

DOE is exploring the following alternatives with relation to the proposed expansion of the refiner-seller list.

(a) *No Action*. If the current shortfall of crude oil supply stabilizes and if emergency allocations are greatly reduced, we could keep the refiner-seller list as it is, consisting of only the fifteen major integrated oil companies.

(b) *Implementing Standby Regulations*. We have adopted standby rules for the allocation of crude oil and we could make them effective. We could implement this program if the Administrator of ERA determined that the crude oil supply situation had worsened.

(c) *Product Allocation*. Instead of allocating crude oil to refiner-buyers, we could allocate refined products, on an equitable basis.

(d) *Large Independents Selling to Only Certain Small Refiners*. We could require the large independents to sell crude oil only to refiner-buyers with refining capacities greater than 50,000 B/D. Thus, if the proposed price change for small refiners is implemented, these new sellers could recover the total cost of crude sold under the program.

**Summary of Benefits**

The proposed changes could result in several benefits. Expansion of the refiner-seller list will increase the sources of crude oil to small independents. Buyers would then be able to buy crude from twenty-two rather than from just the fifteen firms included in the current program. The average number and volume of sales per refiner-seller would decrease. The proposal to increase the price of crude oil sold by refiner-sellers would result in

a price closer to the market price in such sales. This might be fairer to the major integrated oil companies, and because the price would be higher it might provide more incentive for refiner-buyers to order their own crude supplies. For these reasons, refiner-sellers would probably be more willing to negotiate sales with potential refiner-buyers.

#### Summary of Costs

The costs of compliance and administration associated with the proposed amendments would be slight. Only the seven largest independent refiners, if they are included as sellers, would face added reporting requirements.

#### Sectors Affected

The regulations would impose only minimal costs on the industrial and public sectors. Including the large independents as sellers and changing the price of the crude sold would probably increase the price of crude sold to the refiner-buyers. The increase in crude costs legally can and probably would be passed on to the consumer. The impact on prices would be slight. Including large independent refiners as sellers would only have a small financial effect on them as long as they could pass through cost increases for their feedstock in these sales.

The sector of the petroleum industry that would benefit from the proposed changes, as intended, would be the fifteen major, integrated refiners. Refiner-buyers would pass on costs to consumers, who would probably pay slightly higher prices.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

None.

#### Timetable

Further NPRM—fourth quarter 1979.

Draft Regulatory Analysis—fourth quarter 1979.

Public Comment—60 days following NPRM.

Final Rule—fourth quarter 1979 and/or First Quarter 1980.

Final Rule effective—60 days after final rule is issued.

Regulatory Analysis—fourth quarter 1979.

#### Available Documents

NPRM—44 FR 26060 (May 14, 1979).

Transcripts and public comments of the public hearing held on May 31, 1979.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142,

1000 Independence Avenue, S.W., Washington, D.C. 20585.

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#### DOE-ERA

#### Gasohol marketing regulations

#### Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

#### Statement of Problem

Gasoline supplies can be stretched further if increased use is made of gasohol, which is a blend of ethanol (a kind of alcohol) and unleaded gasoline. Because the ethanol in gasohol can be produced from domestic resources of grain, the President has set increased use of gasohol as a national goal. This would reduce our dependence on foreign oil.

Existing Federal regulations on the allocation of motor gasoline control the distribution of gasoline in the U.S. These controls are important primarily during supply shortages. Unless these rules provide for supplies to new gasohol blenders, it will be difficult for these new businesses to plan production and distribution of gasohol, since their suppliers might be required to cut them off during shortages to supply customers who have allocation rights. Therefore, the Department of Energy (DOE) is considering a rule which would require gasoline suppliers to furnish gasoline to gasohol blenders.

#### Alternatives Under Consideration

DOE may do nothing at this time, or may delay any action. The production of unleaded gasoline is expected to increase, which would make DOE's allocation regulations less important, and make it easier for blenders to secure supplies in the market on their own. This alternative might also allay fears that the allocation of unleaded gasoline to gasohol blenders will reduce supplies of gasoline to other distributors.

The Department is also considering ending price and allocations controls on motor gasoline, which would allow gasohol blenders to compete in the market for the gasoline supplies they need.

#### Summary of Benefits

Allocation of unleaded gasoline for blending with ethanol to produce gasohol could provide a regulatory

framework within which ethanol fuel production could increase, perhaps from the present 60 million gallons per year to as much as 300 million gallons per year by 1982. Gasohol use may eventually reach three billion gallons per year, or three percent of present gasoline consumption, as a result of this and other measures. In addition, use of gasohol would also reduce dependence on foreign oil. (See the Report of the Alcohol Fuels Policy Review, DOE, June 1979.)

#### Summary of Costs

Allocation of unleaded gasoline to gasohol blenders would reduce the amount of unleaded gasoline available to other distributors, though not to end users. During a sustained shortage it is possible that some firms would become blenders primarily to secure access to unleaded gasoline; this would distort the marketplace and could result in uneconomic ethanol production for gasohol blending.

Because we expect ethanol production and blending to occur primarily in the Midwest, near resources to produce ethanol, this rule could result in a shift of gasoline supplies to the Midwest at the expense of other regions, unless present rail-freight can evenly distribute supplies throughout the nation during the start-up stages of this new industry. DOE has not yet determined whether the gasohol, once blended, would flow back to the regions affected by reduced gasoline supplies.

#### Sectors Affected

Gasoline consumers will be affected significantly if this rule changes regional fuel availability. Otherwise, consumers will supply experience an increased availability of gasohol. Any action would affect gasoline resellers and refiners, since they would face a new requirement to sell unleaded gasoline to new purchasers who are gasohol blenders. The other customers of these suppliers would face reduced availability.

This new rule will require the Department of Energy's regional offices to process applications from gasohol blenders. However, it is unlikely that this would require new staff or budget authority. Present staff who have received such applications now await criteria to evaluate them.

#### Related Regulations and Actions

DOE has already provided certain price incentives for the marketing of gasohol. DOE price regulations permit gasohol resellers and retailers to pass through as product costs the cost of nonpetroleum-based alcohol blended

with gasoline (43 FR 24265, June 5, 1978). DOE has issued a proposed rule to permit refiners to allocate all of the costs of purchasing or producing alcohol to gasoline, or among the various grades of gasoline (44 FR 32622, June 6, 1979). DOE has issued a proposed rule to offer an entitlement benefit (a payment related to the difference in costs between imported and domestic crude) to alcohol producers or gasoline blenders automatically rather than on an application basis (44 FR 32225, June 5, 1979).

#### Active Government Collaboration

None.

#### Timetable

NPRM—fourth quarter, 1979.  
Public Comment—to follow NPRM.  
Final Rule—to be determined.  
Regulatory Analysis—draft with NPRM, final with Final Rule.

#### Available Documents

DOE's Report of the Alcohol Fuels Policy Review, June, 1979 (prepared by the Office of the Assistant Secretary for Policy and Evaluation).

This document is available from:  
National Technical Information  
Service (NTIS)

U.S. Department of Commerce  
5285 Port Royal Road  
Springfield, Virginia 22161  
Price: Printed copy—\$7.25;  
Microfiche—\$3.00

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#### DOE—ERA

#### Incentives for refinery investment

#### Legal Authority

The Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

#### Statement of Problem

In general, it is the Department of Energy's (DOE) policy that price regulations provide reasonable incentives to refiners to make the most efficient possible use of crude oil. Some refiners claim that pricing regulations relating to refinery investment do not provide such an incentive. Specifically, they claim that the pricing regulations do not allow a passthrough in product prices of an amount which reflects a fair

rate of return on investment in new refinery equipment. These refiners have suggested that the refiner price rule should be amended to permit refiners to receive an annual rate of return on new investments designed to modernize and improve refineries. New refinery investments would enable these refiners to process lower grade crude, oil, upgrade refinery yields, and produce more unleaded gasoline.

Currently, the refiner price regulations provide various mechanisms for the recovery of certain investment costs, in order to encourage refiners to make needed investments in refineries. The following recovery mechanisms are presently in effect: (1) The capital costs of new refining investments can be depreciated and those depreciation costs can be passed through in the form of higher product prices. (2) The cost of borrowed capital, insofar as it is reflected in the interest paid on such borrowings, may be passed through in the form of higher product prices. (3) The so-called gasoline tilt rule, adopted March 1, 1979, provides refiners with the opportunity to pass through more of their costs as increased gasoline prices. (4) Prices of all products other than gasoline are exempt from regulations.

None of the above mechanisms, however, provides for the direct pass through in product prices of an amount which reflects a fair rate of return on equity investments related to gasoline production. None of these mechanisms specifically allows refiners to retain savings from the decreased crude costs which may be available when new investments allow them to process lower quality crude oil into gasoline.

#### Alternatives Under Consideration

Some type of allowance for return on investment could be added to selling prices to provide an incentive for refinery investments. The DOE is exploring the need to provide a return, and the level of return which might be appropriate. Alternatively, refiners might be allowed to retain the cost savings from investments which allow processing of lower quality crude oil.

We will also consider the use of other allowances, such as adjusting the "tilt" for investments or allowing accelerated depreciation for the purposes of cost passthrough. DOE will retain present rules if we do not develop a suitable justification for a change.

#### Summary of Benefits

Providing a return on investment could lead to a more modern refining capability, better able to meet the nation's needs for production of unleaded gasoline and better able to

process cheaper low-quality crude oils. With new investment, it is possible that average crude prices could be driven down in the long run, as could prices for unleaded gasoline.

#### Summary of Costs

The prices of petroleum products will, at least initially, be increased by the added return the rule allows. New refinery investment was estimated at \$1.2 billion for 1977, and we expect it to increase. At the \$1.2 billion investment rate, the additional annualized cost to consumers for petroleum products that could result from rule changes of the kind under consideration could reach approximately \$180 million at the end of the first year and \$360 million at the end of the second year. However, petroleum price and allocation controls are scheduled to expire before the end of the second year in which any rule would be in effect.

#### Sectors Affected

The proposed rule would affect crude oil refiners, and provide incentives to increase the available supplies of unleaded gasoline.

#### Related Regulations and Actions

*Internal:* Amendments to permit the allocation of additional increased costs to motor gasoline C "gasoline tilt rule").

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—December 1979.  
Public Comment—following NPRM.  
Regulatory Analysis—draft with NPRM, final with Final Rule.

#### Available Documents

Notice of Inquiry, 44 FR 50148, August 30, 1979.

Comments in response to above.

Transcript of hearings on above.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

#### Agency Contact

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**DOE-ERA****Natural gas curtailment priorities and related issues****Legal Authority**

Natural Gas Act. Natural Gas Policy Act of 1978 (P. L. 95-621), §§ 401, 402, 403. Department of Energy Organization Act, (P. L. 95-91), §§ 301(b) and 402(a)(1)(E).

**Statement of Problem**

Natural gas curtailment priorities deal with the order in which end-users of natural gas shall be deprived of requirements in the event of shortages. "Curtailment" is generally defined as requirements, calculated according to a predetermined base period, less deliveries. Under the recent provisions of the Natural Gas Policy Act of 1978 (NGPA) and the Department of Energy Organization Act (1977), the Secretary of Energy is assigned responsibility for developing a priority system for determining the order in which curtailment shall occur. The Secretary of Energy has delegated this authority to the Administrator of the Economic Regulatory Administration (ERA). This legislation also authorized the Federal Energy Regulatory Commission (FERC) to administer and implement the curtailment plans drafted by the ERA.

Historically, the Federal Power Commission (FPC) has exclusive Federal jurisdiction for curtailing natural gas in the interstate pipelines pursuant to its authority under the Natural Gas Act (NGA). The FPC dealt with curtailment of natural gas on a case-by-case basis. From the rulings issued in these cases, a priority system developed which ranked end users of natural gas from high (last to be curtailed) to low (first to be curtailed). The FPC priority system generally placed residential and small commercial use in the highest priorities and interruptible large volume industrial users in the lowest, first-curtailed, priorities. Several considerations shaped the above priority system: first, the importance of gas used to protect health, safety, and other human needs; second, the operational difficulty of physically cutting off or reducing service to residential and small commercial customers; third, the differences in the costs that different kinds of end-users would experience in converting to an alternate fuel.

The proposed rule addresses the possible need to reconcile the curtailment priority system that the FPC developed with the new provisions of the NGPA, the Department of Energy Organization Act, and the National Energy Act. An additional reason

motivating the proposed rulemaking is that the existing policy on natural gas curtailment priorities, which was adopted in 1973, has long needed to be reviewed in the light of current circumstances and requirements. Specifically, the areas which the review of curtailment priorities will select for focus are as follows:

(1) Essential agricultural uses. Section 401 of the NGPA requires the Secretary of Energy to prescribe a rule restricting interstate pipelines from curtailing the essential agricultural use requirements that the Secretary of Agriculture has certified. Essential agricultural uses may only be curtailed to meet the needs of other high priority users (e.g., schools, hospitals, residences) or when FERC determines in consultation with the Secretary of Agriculture that an alternate fuel is economically practicable.

(2) Industrial process or feedstock use. Section 402 of the NGPA directs the Secretary of Energy to prescribe a rule limiting the circumstances in which an interstate pipeline may curtail gas supplies used in an industrial process or as a feedstock. Such use refers to gas employed as an ingredient of the end-product of production as distinguished from gas used to power production machinery.

(3) Emergency allocation authority. Relevant sections of the National Energy Act authorize the President to declare a natural gas emergency which would trigger various curtailment plans. As an example, the President could authorize an interstate pipeline to make emergency purchases from intrastate pipelines under short term contracts. This authority, while outside the scope of the curtailment priority system itself, must work in concert with it. Therefore, this inquiry will consider how best to implement this authority.

(4) Development of supplemental supplies and reductions in oil imports. Supplemental gas volumes such as Synthetic Natural Gas (SNG) produced from coal and Liquefied Natural Gas (LNG) imported from abroad should be treated as a part of a common system of gas supplies. The question arises to what extent the ERA should use its curtailment powers under the NGPA and the Department of Energy Organization Act to facilitate and encourage the development of these supplemental gas volumes. Facilitation of the development of SNG and LNG sources would promote the objective of reducing oil imports.

**Alternatives Under Consideration**

ERA is considering several alternative approaches to a curtailment priority system. They are as follows:

(1) Maintaining the present system as developed by the FPC while making those changes, primarily concerning essential agricultural use and industrial process and feedstock, required by the NGPA.

(2) Developing a rationing system that reflects the requirements during a current base period, and reflecting the agriculture, industrial process, and feedstock gas priorities that are determined by statute.

(3) Relating the incremental pricing provisions of the NGPA to the curtailment priority system. Under this approach, low priority users of natural gas would be among the first to pay the relatively high cost of additional units of natural or synthetic gas. High priority users, by contrast, would continue to pay the lower average or "rolled-in" costs of additional increments of gas.

Consideration is also being given to the manner in which these alternatives should be applied. There is a question concerning whether ERA guidelines should apply strictly to all interstate pipelines which transport gas, or whether FERC should be allowed to apply the general policy under the ERA rule to the differing circumstances of individual pipelines, making adjustments where they are necessary.

**Summary of Benefits**

The review of gas curtailment priority systems would benefit interstate pipelines, natural gas distributors, direct users of natural gas, indirect users (customers of direct gas users), employees of direct users and indirect users of gas, and the general public. It could also modernize and perhaps simplify the complex Federal curtailment scheme. It appears that direct users of gas may be the most likely to benefit from improvements which could result from ERA's assessment of natural gas curtailment priorities. The costs of minimizing the risks of supply disruptions and of coping with gas curtailments would be reduced.

**Summary of Costs**

Cost data will not be available until we complete economic and environmental analyses in late November or December 1979. The costs categories users incur during any future shortage will depend upon the priorities we eventually assign, as well as on any incremental pricing relationships that we establish.

**Sectors Affected**

Forthcoming economic and environmental studies will show the manner in which curtailment policy will affect economic and regional sections. In the past, the states that curtailment has affected most have been the Atlantic States stretching south from New York; several mid-Western States, such as Ohio and Kentucky; and California. The industrial segments that curtailment affects most are those which could not use alternate fuels because of the nature of their processes or because the capability to use alternate fuels had not been installed. If we change the current policy on curtailment priorities, it will affect Government, industry, and ultimately end-use customers at the regional, county, and local level where gas supply is at issue.

**Related Regulations and Actions**

*Internal:* "Curtailment Priorities for Essential Agricultural Use," Final Rule issued March 15, 1979, 44 FR 15642.

"Emergency Natural Gas Regulations," under consideration.

*External:* FERC—Incremental Pricing Rules issued under Title III of the NGPA.

FERC—Curtailment Implementation Rules issued under Title IV of the NGPA.

**Active Government Collaboration**

The Federal Energy Regulatory Commission staff is kept informed of Department of Energy, Economic Regulatory Administration activities. The Commission will formally review the DOE/ERA rule, as provided in § 404 of the DOE Act.

**Timetable**

NPRM—first quarter of 1980.

Public Comment—following NPRM.

Final Rule—second quarter of 1980.

Final Rule effective—30 days after we issue the Final Rule.

Regulatory Analysis and draft Environmental Impact Statement—DOE is preparing and will issue drafts of these documents with the NPRM.

**Available Documents**

Final Rule—"Curtailment Priorities for Essential Agricultural Uses," (44 FR 15642, March 15, 1979).

Notice of Inquiry (NOI) (44 FR 16954, March 20, 1979).

Public comments on the above.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

**Agency Contact**

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**DOE—Resource Applications****Outer continental shelf (OCS) sequential bidding regulations****Legal Authority**

Department of Energy Organization Act, §§ 302(b)(1) and 303(c), 42 U.S.C. §§ 7152(b)(1) and 7153(c); and the Outer Continental Shelf Lands Act, as amended § 8(a)(1), 43 U.S.C. § 1337(a)(1).

**Statement of Problem**

The present cash bonus, fixed royalty bidding system for Outer Continental Shelf (OCS) leases requires the Federal Government to offer all drilling areas ("tracts") included in an OCS lease sale to bidders at the same time. All bids must be sealed and accompanied by one-fifth of the cash payment the bidder intends to pay for the lease (the "cash bonus"). Bids are opened, announced publicly, and recorded, but no bids are accepted or rejected, and no leases are awarded at that time. Within sixty days of the opening of bids, the Department of the Interior (DOI), which administers this program, decides whether to accept the bid from the highest qualified bidder for each tract. Bids that DOI does not accept within the sixty-day period, it rejects. The Department returns the money that was deposited on rejected bids.

The present system requires a commitment of cash resources by firms to particular OCS lease sales; this may strain the ability of some firms to participate in the OCS leasing process. Bidders must be prepared to support each bid immediately with a deposit of one-fifth of the total cash payment. Opening all bids at the same time limits the number and magnitude of bids that an individual firm is able to submit. In addition, a firm might win on a greater number of tracts in an OCS lease sale than it had anticipated, which could call for bonus payments that exceed the firm's financial resources, forcing it to search for additional sources of capital.

The Department of Energy (DOE) expects that smaller firms are more subject to restraints of this type than larger firms. Some small companies may have withdrawn from competition for tracts because of financial barriers. In addition, the simultaneous nature of the bidding process may tend to preserve an

informational advantage that larger firms may have over smaller ones because they can afford more extensive exploration in advance of a lease sale.

Under § 302(b)(1) of the Department of Energy Organization Act, DOE is responsible for promulgating regulations which foster competition for Federal leases, to assure the public the maximum return on its resources. Thus, DOE is interested in alternative bidding mechanisms which may improve the ability of smaller companies to compete in these lease sales.

Sequential bidding would address these problems by dividing an OCS lease sale into at least three bidding sessions, separated by a minimum of 24 hours. Tracts would be assigned to bidding sessions through a random selection procedure; bidding sessions each would consist of an approximately equal number of tracts. Bids would be opened at the conclusion of each bidding session and the amount of the highest bid for each tract would be announced. Cash bonus deposits accompanying the highest bids would be retained by DOI until it made a decision on awarding leases. DOI would return all other cash bonus deposits to the bidders that submitted them immediately after the conclusion of each bidding session.

**Alternatives Under Consideration**

Possible alternatives to sequential bidding which we have been considering include a "bid limit" option, which would allow bidders to set a "maximum aggregate winning cash bonus limit" for a lease sale. This would enable a firm to bid on tracts with the assurance that its winning bids would not exceed an amount which it had stipulated.

Another possible approach that might achieve results similar to sequential bidding would be to hold lease sales at shorter intervals, each sale with approximately the same number of tracts. However, in order to reduce a bidder's financial exposure as effectively as we think sequential bidding could do, 18 to 24 lease sales would be necessary each year. The administrative burdens to DOE associated with this alternative are severe.

Retention of the present bidding system is another alternative. This alternative would preserve a maximum degree of simplicity in administrative matters, but would not solve the problems we have discussed above.

DOE has proposed that sequential bidding be tested on an experimental basis. This will allow bidders to become familiar with the process, and allow DOE to study bidder reactions. This

experimental approach is an innovative alternative to an immediate move to an unproven new bidding system.

#### Summary of Benefits

DOE expects sequential bidding to foster competition for Federal OCS leases, partially by easing financial barriers to participation, and partially by reducing informational advantages that major OCS participants currently have. Returning cash bonus deposits of unsuccessful bidders after each session will allow them to use returned funds in the subsequent bidding session. Announcing the amount of the high bid for each tract will provide information on the value other bidders have placed on tracts as a result of their exploration. These changes will tend to equalize the informational and financial position of smaller firms participating in leasing competition.

DOE estimates that the application of sequential bidding to an OCS lease sale would yield greater revenue to the Government because of increased competition for OCS leases.

#### Summary of Costs

The use of sequential bidding imposes a relatively minor administrative cost on DOE and DOI in performing additional analyses and extending the actual conduct of the sale over a minimum of three days.

#### Sectors Affected

The use of sequential bidding primarily affects current and prospective bidders for OCS leases. DOE anticipates that smaller firms would benefit more from sequential bidding than would the major participants in OCS lease sales.

#### Related Regulations and Actions

*Internal:* Proposed OCS bidding system regulations, published at 44 FR 46236. See entry elsewhere in this Calendar.

*External:* Current OCS lease sales bidding procedures, administered by the Department of the Interior, found at 43 CFR 3300.

#### Active Government Collaboration

Department of the Interior. The Department of Justice, and the Federal Trade Commission are advising on competition issues.

#### Timetable

Final Rule—first quarter, 1980.

Final Rule effective—60 days after it is issued.

#### Available Documents

Draft Regulatory Analysis, "Increasing Competition for Federally-Owned Mineral Fuels by Altering the Present Bidding Process to Allow for Sequential Bidding," (September 2, 1979).

NPRM—44 FR 52842, September 11, 1979.

Public comments in response to NPRM.

All documents are available in the DOE Freedom of Information Reading Room, Room GA-142, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585

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#### DOE—RA

Profit share bidding system regulations for Federal outer continental shelf (OCS) oil and gas leases

#### Legal Authority

Outer Continental Shelf Lands Act, ch. 345, 67 Stat. 462 (43 U.S.C. § 1331 *et seq.*), as amended by P.L. 95-372; Department of Energy Organization Act, P.L. 95-91, 91 Stat. 565 (42 U.S.C. § 7101 *et seq.*).

#### Statement of Problem

The Department of the Interior (DOI) currently leases outer continental shelf (OCS) oil and gas tracts to developers. Department of Energy (DOE) must promulgate regulations to foster competition for bidding on these tracts, implement alternative bidding systems, and calculate net profits of developers. The present "cash bonus, fixed royalty" bidding system places a heavy reliance on large front-end cash payments by bidders (the "cash bonus") as the principal means of selecting a winning bidder and obtaining a fair price on the public's property (See Calendar entries relating to OCS Sequential bidding and Proposed OCS bidding systems). The requirement for large cash bonus payments may inhibit competition for OCS leases by preventing smaller firms from participating as fully as they might in OCS development. The "fixed net profit share" bidding system is designed to shift Government return away from initial cash bonuses into deferred

payments which, in the case of this bidding system, would be based on net profits from the actual production of oil and gas.

In connection with a fixed net profit share bidding system, we must establish rules to govern the calculation of "net profits." Any regulations will therefore include accounting procedures designed to permit lessees to calculate net profits in a uniform manner, as well as procedures for audits by the Federal Government, and challenges to any adjustments the Government might make as a result of such audits.

#### Alternatives Under Consideration

A net profit share bidding system requires a procedure for determining the value or amount of oil and gas produced from a lease. In addition, a means to identify and measure the costs of operating the lease must be specified, and those costs must be subtracted from revenues to determine the net profits attributable to a lease. The need to identify costs makes the fixed net profit share system considerably more complex than bidding systems that were previously used for OCS lease sales.

Several different profit sharing systems are now being examined by DOE. All of these basic systems set rules for adding up costs and for subtracting these costs from production revenue to determine net profits. The systems differ primarily in the method by which each allows the successful bidder to recover money invested during the early development stages of a lease term. Those differences involve technical accounting issues. A complete description and comparison of these systems requires too much space to be included here; however, the information is available elsewhere (see "Available Documents" section).

We have chosen the proposed accounting procedures to conform, as closely as is practicable, with the accounting procedures for joint offshore operations developed by the Council of Petroleum Accountants Societies of North America (COPAS). The COPAS procedures are an appropriate base for the cost identification portion of the accounting system because: (1) the net profit share lease relationship is analogous to a joint working interest agreement between private parties (i.e., an agreement that shares at a fixed rate all costs and revenue); (2) COPAS is only a procedure for identifying, measuring, and allocating costs for direct billing of joint interest partners; hence, it is not complicated by rules for capitalization or other guidelines for disposition of costs that would be contained in a complete financial

accounting procedure; and (3) the COPAS procedures or minor variations on it, are in widespread use; thus, its adoption by DOE would minimize the accounting burden and interpretation problems for the industry.

#### Summary of Benefits

The profit share bidding system should make it possible for small firms to compete more effectively for OCS leases and to free funds for exploration that previously have been tied up in cash bonuses. Because the system will require smaller lease payments from less productive OCS leases, we believe that the regulation will foster the development of smaller oil and gas fields, maximize production of oil and gas from the OCS, and increase the total revenue to the public from the lease of public OCS property.

#### Summary of Costs

The administration of the regulation is the responsibility of the U.S. Geological Survey (USGS) within the Department of the Interior (DOI). Use of this bidding system will result in greater administrative responsibilities for the USGS, which will have to make determinations on the allowability of certain costs, and perform periodic audits.

Firms seeking leases under the net profit share system will be required to comply with the accounting and reporting procedures established by these regulations. A preliminary study of industry account practices indicates that most firms that might participate in profit share leasing already use internal accounting procedures that can identify and assign costs to individual OCS tracts they have leased. Thus, the profit share system would impose periodic reporting requirements, but would not substantially alter internal accounting operations.

#### Sectors Affected

This regulation will affect those companies bidding for and receiving Federal OCS leases. No significant indirect effects to other sectors are anticipated.

#### Related Regulations and Actions

*Internal:* Proposed OCS bidding system regulations (44 FR 46235). See description elsewhere in this Calendar.

*External:* Regulations of the Department of the Interior regarding OCS leases, found at 43 CFR 3300.

#### Active Government Collaboration

As required by § 303(b) of the DOE Act, we have consulted the Secretary of the Interior on these proposed

regulations and we gave him 30 days to comment formally on them. The Secretary of the Interior made preliminary comments on initial drafts of these regulations, and formally reviewed the final draft.

#### Timetable

Public Comment—following NPRM.

Final Rule—early 1980.

Final Rule effective—60 days after we issue the final rule.

Regulatory Analysis—fourth quarter October 1979.

#### Available Documents

NPRM and draft Regulatory Analysis—November 1979; citation not available at the time of this publication.

"Evaluation of Profit Share Leasing System," draft dated March 1979.

This document is available from the Leasing Policy Development Office, Room 2317, Federal Building (Mail Stop 3344), Department of Energy, 12th & Pennsylvania Avenue, N.W., Washington, D.C. 20461.

#### Agency Contact

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Economic Analysis Division  
Leasing Policy Development Office  
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#### DOE—RA

#### Proposed outer continental shelf (OCS) bidding systems regulations

#### Legal Authority.

Department of Energy Organization Act, §§ 302(b)(2) and 303(c)(1), 42 U.S.C. §§ 7152(b)(2) and 7153(c); Outer Continental Shelf Lands Act, as amended, § 8(a)(1), 43 U.S.C. § 1337(a)(1).

#### Statement of the Problem

Under 302(b)(2) of the Department of Energy Organization Act, the Department of Energy (DOE) is responsible for promulgating regulations concerning implementation of alternative bidding systems for Outer Continental Shelf (OCS) leases. This proposed regulation would establish three bidding systems for use in OCS lease sales.

A bidding system is a set of economic (and other) terms and conditions by which the rights to explore, develop and produce Federal OCS energy resources are offered for sale and transferred to private parties. The terms and conditions of the bidding system affect attitudes toward exploration, development and production of a lease. Bidding systems should:

(a) provide a fair return to the Federal Government,

(b) stimulate competition,  
(c) prevent speculation,  
(d) contribute to the discovery of oil and gas,

(e) promote development of new oil and gas resources in an efficient and timely manner, and

(f) limit administrative burdens on government and industry.

The OCS Lands Act Amendments of 1978 ("the Amendments") directed a review of current bidding systems to determine whether they represent an ideal mix of the listed objectives. The Amendments particularly focused attention on the "cash bonus bid, fixed royalty" bidding system. Under this system, which has been used for over 95 percent of the acreage leased, the royalty rate to be paid out of lease production is fixed, and firms bid for leases on particular tracts by offering the government a cash payment up front. The highest "cash bonus" bid for a tract wins the lease, provided the bid exceeds a minimum level (established by the U.S. Geological Survey prior to the sale).

This system requires bidders to (a) submit all bids simultaneously and (b) back them with substantial deposits. The degree of financial exposure which the system requires enables large firms to compete more effectively than smaller ones, since large firms can more readily meet the cash requirements of this type of bidding system. The constraints this system imposes on smaller companies reduce competition and limit the number of bids per tract.

#### Alternatives Under Consideration.

DOE has proposed two alternatives to the cash bonus, fixed royalty bidding system. One of these is the "royalty bidding, fixed cash bonus" system. Under this system, the cash bonus is fixed (at a nominal level) and companies bid on the royalty rate that will apply if the lease is productive. Because royalty bidding de-emphasizes the cash bonus, it encourages participation by smaller companies. There is no immediate penalty to the bidder for increasing his royalty bid. Yet there is a danger, inherent in this system, that a bidder will increase his royalty bid in an attempt to win the lease only to find that the royalty rate is too high to permit economic development of the resource eventually discovered.

Another proposed alternative is the "cash bonus bid, sliding scale royalty." A sliding scale royalty system also uses a cash bonus bid variable, but the royalty rate that applies for each time period is based on the value of production from the lease during that time period. Thus, the royalty rate could

and probably will change from period to period. When compared with the cash bonus, fixed royalty systems under similar conditions, the sliding scale systems tend to reduce the expected cash bonus required to win a lease. Also, when compared to higher-rate fixed royalty systems, the sliding scale tends to reduce the risk that companies will not develop lease tracts with smaller deposits of oil and gas, and correspondingly reduces the probability that companies will terminate production prematurely. The reduced cash bonuses would probably encourage bidding by smaller companies, and could entice firms to bid on tracts that would not be leased under the traditional system.

#### Summary of Benefits

DOE anticipates that the regulations would improve the OCS oil and gas leasing program. Adoption of the "cash bonus bid, sliding scale royalty" would principally benefit smaller companies, which would be able to compete on a more equal footing with the large firms in leasing sales. The public will also benefit if revised bidding systems do a better job of meeting the stated objectives.

#### Summary of Costs

DOE anticipates no significant additional costs as a result of this regulation. Government administrative costs may increase slightly.

#### Sectors Affected

This regulation would primarily affect participants in OCS lease sales.

#### Related Regulations and Actions

*Internal:* OCS sequential bidding regulations (see related item in this Calendar).

*External:* Regulations of the Department of the Interior regarding OCS leases, 43 CFR 3300.

#### Active Government Collaboration

Department of the Interior. The Department of Justice is advising on competition issues.

#### Timetable

Final Rule—fourth quarter, 1979.

Final Rule effective—60 days after we issue final rule.

#### Available Documents

We have prepared a regulatory analysis entitled, "Outer Continental Shelf Bidding System Regulations," and it is available from the agency contact listed below.

NPRM—44 FR 46235, August 6, 1979.

Public comments in response to NPRM.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GB-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

#### Agency Contact

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### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### Neighborhoods, Voluntary Associations and Consumer Protection

#### Energy performance standards for new buildings

Please see text of joint HUD and DOE entry under DOE—BCS on page 68218.

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### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

#### Surface management of mining claims located on the public lands

#### Legal Authority

Revised Statutes, § 2319, 30 U.S.C. § 22.

Revised Statutes, § 2478, 30 U.S.C. § 1201.

The Federal Land Policy and Management Act of 1976, §§ 302(b) and 603(c), 43 U.S.C. § 1701 *et seq.*

#### Statement of Problem

The 1872 Mining Law gave individuals the right to go on the public lands to explore for and develop hard rock minerals. This right has gone unregulated since it was granted in 1872. In the period since 1872, thousands of mining claims have been located and developed on the public lands with little or no regard for their environmental impact on the public lands.

The objective of these regulations is to assure environmental protection to the public lands and their resources by preventing undue and unnecessary degradation of the public lands that may be caused by careless mining practices, while having a minimal effect on the legitimate mining industry.

#### Alternatives Under Consideration

At the heart of the question of how much control the Department of the Interior can exercise over the mining of hardrock minerals on the public lands is the right granted by the 1872 Mining Law to anyone who wishes to enter the public lands for the purpose of exploring for and developing hardrock minerals. The alternatives the Department of the Interior is considering vary from the present non-control to the most stringent control possible without denying an individual the right of entry that the 1872 Mining Law grants.

The primary method the Department is considering as a method of regulation is setting a threshold or level of permissible mining activity that will be allowed without requiring an individual to obtain a permit from the Bureau of Land Management to engage in mining activity. The principal alternatives have to do with the level of the threshold for the allowed activity. Once it determines the allowed level, the Department of the Interior will require a permit for all mining activity that exceeds that level. Since the Department has never regulated this activity before, we have no estimate of the number of individuals the regulations will affect. It is clear that the lower the level of activity that the Department allows without a permit, the higher will be the number of individuals the regulation will affect.

The aim of the regulations is to balance the right of entry permitted by the law against the need to protect the public lands, to the greatest extent possible, from unnecessary degradation.

In determining the level of mining activity that the Department of the Interior will allow without imposing a requirement for a permit, the Department has worked closely with all sectors of the mining industry, State and local governments, and environmentalists.

#### Summary of Benefits

The resultant benefits of this action could include reduced air pollution, cleaner water, acceptable landscape management, and better road locations and designs. There also could be improved protection of soils; plants; animals; survey monuments; areas of critical environmental concern; and cultural, historical, and scientific resources. In addition, there could be improvements in waste disposal, and fire prevention and control.

#### Summary of Costs

The Department of the Interior cannot estimate the extent of the economic effects, because this activity has never

been regulated and there is no basis for determining the number of individuals, number of mines, or areas that the regulations will affect. The costs involved can be balanced against the worth of environmentally protected public lands and the increased costs of minerals that the protection extended by the implementation of regulations will cause. Rough estimates of the costs per operation for reclamation have ranged from less than \$5,000 to over \$12,000.

#### Sectors Affected

The regulations would affect the mining industry; all members of the public who engage in mining of hardrock minerals on the public lands either as a profession or as a hobby; all members of the public who use the public lands for general purposes, particularly those in the public land states of the West; and the general public, to the extent that mining costs increase as a result of compliance with this regulation and are passed on to the public.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

There have been consultations with the Department of Agriculture so that the Department of the Interior regulations will be as consistent as possible with those published by the Forest Service. The Environmental Protection Agency will be involved through the review of an environmental impact statement related to the preparation of these regulations.

#### Timetable

NPRM—November 19, 1979.

Final Rule—March 3, 1980.

#### Agency Contact

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#### DOI—Fish and Wildlife Service

Endangered Species Act, § 4,  
regulations for listing endangered and  
threatened wildlife and plants

#### Legal Authority

16 U.S.C. §§ 1531-1543

#### Statement of Problem

The intent of this regulation is to interpret and implement the provisions of § 4 of the Endangered Species Act of 1973 and its 1978 amendments. Section 4

of the Act requires the Department of the Interior (DOI) to list appropriate wildlife and plants as "Endangered" or "Threatened." The List of Endangered and Threatened Wildlife and Plants is codified at 50 CFR 17.11.

The Endangered Species Act also requires that DOI designate areas termed "Critical Habitats." These are geographical areas on which are found the physical or biological features essential to the conservation of a particular species and which may require special management considerations or protection for the survival of a Threatened or Endangered species.

Species listed and Critical Habitats determined under § 4 of the Act will benefit from the protection provided to them under § 7(a) of the Act, which requires each Federal agency to insure, in consultation with DOI, that actions they authorize, fund or carry out do not jeopardize the continued existence of listed species or result in the destruction or adverse modification of their Critical Habitat.

Under § 9 of the Act, no person shall import, export, possess, sell, deliver, carry, transport, or ship any Endangered or Threatened species without obtaining a permit from DOI under § 10 of the Act.

The 1978 Amendments to the Act directed DOI to revise the existing formats, definitions, and explanatory notes for listing wildlife and plants. The Amendments were needed to encourage State and local governments and the interested public to participate in determining Endangered or Threatened status of wildlife and plants, and in determining their Critical Habitat. The Amendments establish procedures to publish general notice of proposed listings and Critical Habitat determinations and to specifically provide notice, not less than 60 days before the effective date of the listings, to all local governments located within or adjacent to a proposed Critical Habitat.

There are also provisions for public meetings and hearings to solicit from State and local governments and the interested public input relative to the proposed listing and Critical Habitat determinations and to provide those participants with the biological data on which the proposal is based and information on the economic impact of the Critical Habitat designation on the area.

#### Alternatives Under Consideration

The only alternatives being considered deal with varying formats for displaying the information required, and

do not produce substantive differences in the proposal.

#### Summary of Benefits

The proposed rule will benefit the public by allowing them to participate more fully in the designation of Threatened and Endangered wildlife and plants, and their Critical Habitats. The designated species will benefit from the proposed actions since the public close to their habitat, and therefore knowledgeable about it, will be participating more fully.

#### Summary of Costs

The Secretary of the Interior shall consider the economic effect and any other relevant effect of specifying any particular area as a Critical Habitat, unless he determines that the failure to so specify the area will result in the extinction of the species. We cannot make predictions of the exact economic effects of this regulation at this time. However, since each Federal agency must insure that its actions do not adversely affect Critical Habitats, it is possible that determination of Critical Habitat could require Federal agencies, through § 7 consultation, to seek reasonable and prudent alternatives to the planned action, such as the building of a dam, the location of a highway, etc.

#### Sectors Affected

Endangered or Threatened wildlife and plants; Federal Agencies; businesses and persons that import, export, possess, sell, deliver, carry, transport, or ship any Endangered or Threatened species.

#### Related Regulations and Actions

*Internal:* We are also developing the following regulations to implement the 1978 Amendments to the Endangered Species Act: Amendment of Procedures to Apply for an Exemption; Amendment of the Endangered Species Committee; Amendments to § 7 (consultation); New Raptor Regulations; Disposal of Antique Articles Regulations; New Self-Defense Regulations; and Quarantine Station and Licensing Regulation. (No citations on any of the above related regulations were available at the time of the publication of the Calendar.)

*External:* Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 *et seq.*; Convention on International Trade in Endangered Species of Wild Fauna and Flora; and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

#### Active Government Collaboration

We are consulting with the National Marine Fisheries Service under the

Department of Commerce in developing this regulation.

#### Timetable

Final Rule—January 2, 1980.  
Regulatory Analysis—unknown,  
pending Congressional action.

#### Available Documents

Review Draft of § 4 Regulations  
Prepared—March 10, 1979.  
NPRM—April 10, 1979.

#### Agency Contact

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#### DOI—Heritage Conservation and Recreation Service

Rules and regulations pertaining to the urban park and recreation recovery program

#### Legal Authority

Urban Park and Recreation Recovery Act of 1978, 16 U.S.C. § S2501-2514.

#### Statement of Problem

In 1977, the Heritage Conservation and Recreation Service, U.S. Department of the Interior, completed a National Urban Recreation Study, mandated by Congress, which described and assessed the current condition of urban recreation in the country. The Study indicated that the quality of life in urban areas is closely related to the availability of fully functional park and recreation systems, and that city residents need close-to-home recreation opportunities that meet specialized urban demands. The greatest recreational deficiencies are in large cities, especially at neighborhood levels. In addition, inadequate financing of urban recreation programs, because of the fiscal difficulties of many large cities, has led to the deterioration of facilities, nonavailability of recreation services, and an inability to adapt recreational programs to changing circumstances. There was no existing Federal assistance program which fully addressed the needs for physical rehabilitation and revitalization of these park and recreation systems.

In his policy message of March 27, 1978, President Carter proposed a new Federal grant program whereby urban communities could compete for funds to revive and rebuild their parks and recreation facilities. On October 13, 1978, Congress passed the National Parks and Recreation Act of 1978, and

on November 10, 1978, the President signed the bill into law. Title X, the Urban Park and Recreation Recovery Act (UPARR) of 1978, authorized the Secretary of the Interior to establish a five-year program to provide Federal grants to economically hard-pressed communities, specifically to help rehabilitate critically needed recreation areas and facilities and develop improved recreation programs. The Secretary of the Interior has delegated the responsibility for developing the Urban Park and Recreation Program to the Director of the Heritage Conservation and Recreation Service.

Beginning in Fall 1979, this new program has operated under interim rules to provide grants to local governments to rehabilitate existing indoor and outdoor recreation facilities, to demonstrate innovative ways to enhance park and recreation opportunities, and to develop local Recovery Action Programs, which are documents that identify community needs, objectives, action priorities, and strategies for revitalizing the total public and private recreation system. This proposal outlines the content of the final rule DOI will publish.

#### Alternatives Under Consideration

Alternatives which we considered for distributing funds under this program included the following: (1) first-come, first-served, (2) allocation by jurisdiction, and (3) competition for funds based on a series of specific criteria.

On a first-come, first-served basis only those jurisdictions with enough money to initially hire staff and prepare a Recovery Action Program more quickly than their economically distressed neighboring communities would receive grants. Since this program is meant for distressed communities, according to the legislation, it would not be fair to accept the first completed programs and applications without allowing ample time for other hard-pressed and/or inexperienced jurisdictions to find or acquire the resources to plan their programs.

DOI feels that allocations of a specific fund amount to eligible jurisdictions would not be fair, because each jurisdiction is unique, with different needs and priorities. Some jurisdictions may only need a rehabilitation grant to satisfy needs in a small distressed area, while others may need both rehabilitation and innovation grants to help revitalize a recreation system which has long had financial problems.

The Department of the Interior rejected these two alternatives, because they did not satisfy the intent of the

President's message to Congress on the National Urban Policy. The message stated that these grants would be "challenge grants." Therefore, the intent of the program would not be served if funds were allocated without competition or without considering the quality of local planning and commitment.

The third alternative we considered was a competitive program for selecting proposals. The Department of the Interior decided to use this method, by developing a set of criteria for judging the quality of proposals. This method will allow us to consider a larger variety of factors. Emphasis will be on the existing conditions that are unique to each community, on the quality of the specific projects it proposes, and on its overall commitments to improvements in planning, design, coordination and support for recreation.

#### Summary of Benefits

This program will improve the quality of life for residents of large distressed urban areas. It will upgrade parks and facilities, to improve areas, both environmentally and aesthetically. It will create job opportunities for low income people, minorities, and youths in rehabilitating park areas and facilities. It will encourage urban jurisdictions to rehabilitate existing recreation areas and develop plans and programs for long-term operation and maintenance. Money for innovative projects, otherwise unfundable because of budget restraints, will also be available. The rehabilitation of park and recreation areas and facilities will encourage careful and creative use of existing resources and historic facilities. Energy costs should decrease as recreation facilities and areas are provided close to home for neighborhood residents.

Congress authorized a total of \$725 million to be spent on the UPARR program over the next five years, \$150 million for FY 1979-1982, and \$125 million for FY 1983. Congress appropriated a supplementary budget of \$20 million for FY 1979; the House passed an appropriation for FY 1980 of \$125 million. Except for administrative costs, the Department of the Interior will award these funds to urban jurisdictions to implement their recovery plans.

#### Summary of Costs

We anticipate few adverse effects from the program, and we expect minimal negative environmental impacts. DOI administrative functions will increase only to the extent that this is a new program and requires staff for its administration. Grant applications require applicants to do minimal

paperwork. The local agencies involved in implementing the program will bear a majority of the administrative costs. Most local administrative and planning costs can be counted as the local matching grants portion, if the locality is selected for a grant award.

#### Sectors Affected

The UPARR program will have the largest beneficial effect on low and moderate income groups, minorities, and populations under 18 and over 60. All members of the public who use the areas, facilities or programs improved with UPARR grant money will also benefit. The general public will be affected to the extent that it will enjoy the overall benefits of an improved and upgraded community.

The UPARR will have an effect on the local urban jurisdictions receiving grant monies and on the State in which the jurisdiction is located. The Federal government will be affected to the extent that it will be implementing and monitoring the UPARR program.

#### Related Regulations and Actions

*Internal:* "Eligibility Regulations," Interim Rule, March 14, 1979.

"Uniform Criteria for Preparation of Local Recovery Action Programs," Interim Rule, July 5, 1979.

"Grant Procedure Regulations for Administration of the Urban Park and Recreation Recovery Act of 1978," Interim Rule, August 19, 1979.

We will develop final rules on the Interim Rules following 60-day public comment periods.

*External:* None.

#### Active Government Collaboration

The Department of Housing and Urban Development is cooperating with the Division of Urban Programs in Title X Compliance.

#### Timetable

Final Rule for Planning—December 1, 1979.

Final Rule for Grants—January 15, 1980.

#### Available Documents

36 CFR 1228. Eligibility Regulations, March 14, 1979.

"Uniform Criteria for Preparation of Local Recovery Action Programs," Interim Rule, July 5, 1979.

"Grant Procedure Regulations for Administration of the Urban Park and Recreation Recovery Act," Interim Rule, August 9, 1979.

"Program Eligibility Provisions," October 9, 1979.

A Draft Regulatory Analysis, an Urban Community Urban Impact

Statement, an Environmental Assessment, and the public comments received on the interim regulations are available for review at the: Urban Programs Office, Heritage Conservation and Recreation Service, Department of the Interior, 440 G Street, N.W., Washington, D.C. 20243.

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#### DOI-Water and Power Resource Service

#### Rules and regulations for acreage limitation under Federal Reclamation law

#### Legal Authority

The Reclamation Act of 1902, as amended and supplemented, 43 U.S.C. § 371 *et seq.*

#### Statement of Problem

Federal Reclamation law administered by the Water and Power Resource Service (WPRS, formerly Bureau of Reclamation) of the Department of the Interior (DOI) places a limit of 160 acres on the quantity of land an individual may own and irrigate with water from a Federal water supply project. Only projects where specific congressional or administrative exemptions or modifications to the law have been granted may exceed this limit, which has been in effect since the basic Reclamation law was enacted in 1902. Land in excess of 160 acres may receive project water if the owner enters into a contract with the United States agreeing to sell the excess land to an individual who, after the purchase, will not own more than 160 acres. The sale must be made under terms and conditions that satisfy the Secretary of the Interior and at a price that does not reflect the increase in the value to the land attributable to the construction of the Federal Reclamation project. The contract specifies the time period during which the landowner must sell the excess land. If the landowner does not sell the land within that period, the Secretary of the Interior has power of attorney to sell the land. If the landowner chooses not to use Federal project water for the excess land, there is no requirement that he place the land under contract or that he sell it. The 1902 Act also imposes a requirement

that the landowner be a resident on or in the neighborhood of the land, interpreted to be 50 miles from the land, to be eligible to receive project water.

The purposes of the acreage limitation provisions of the Reclamation law are to promote owner-operated family farms, provide opportunity for a maximum number of farmers on land that Federal project water serves, and preclude speculative gain in the disposition of land that project water serves. In the past, these provisions have been administered through irrigation districts and other entities that have contracted with the United States for the Federal Reclamation project. Determinations on the application of the provisions have been made on a case-by-case basis, based on court decisions and opinions of the Solicitor of the Department of the Interior. The DOI or the Water and Power Resource Service has never promulgated formal rules by which the acreage limitation provisions would be administered.

The practices followed in the past have resulted in a lack of uniformity among districts in administering the acreage limitation provisions, and in some cases, lax enforcement of those provisions. In August 1976, a United States district court ordered the Secretary of the Interior to prepare and publish rules and regulations dealing with acreage limitation under Reclamation law, with specific reference to procedures to be used to approve sales of excess land (National Land for People, Inc. v. The Bureau of Reclamation of the Department of the Interior (417 F. Supp. 449 (D.C.D.C. 1977))). Such rules and regulations will provide the needed guidelines for the uniform administration of the acreage limitation of the Reclamation law to assure that the purposes of the law are carried out.

On August 25, 1977, the DOI published proposed rules and regulations for acreage limitation in the Federal Register (43 CFR 426). During the 120-day comment period on these proposed rules, the DOI received over 11,000 written comments and heard testimonies from 1,075 witnesses at 17 public hearings. The Department then revised the proposed rules, taking these comments into consideration. These revised rules will serve as the basis for the environmental impact statement (EIS) the DOI is preparing to comply with the order of a United States district court, issued December 7, 1977, halting the rulemaking until the Department completed an EIS. The draft EIS will be published by December 15, 1980, and the final EIS by July 1, 1981. The EIS will

assess the economic, social, community, and environmental effects of the proposed rules.

#### Alternatives Under Consideration

The EIS will address a number of alternatives to amend the acreage limitation provisions of Reclamation law and the rules that the DOI can establish under existing law. The alternatives will deal with the size of ownerships and operations that are eligible for Federal project water, residency requirements, ownership arrangements, and procedures that the DOI must use in processing sales of land receiving Federal project water. The alternatives will include the following:

Alternative one is a small farm alternative, with the size of the farm operation eligible to receive Federal project water limited to 320 acres.

Alternative two is based on the DOI legislative proposal that reflects the revised proposed rules. It limits the size of the farm operation that is eligible to receive Federal project water to 960 acres, and limits the multiple ownership arrangements that are permitted.

Alternative three is based on procedures used in the past which limited ownership to 160 acres per individual, permitted loose multiple ownership arrangements and unlimited leasing.

Alternative four is based on the pricing structure for Federal project water that would permit delivery of project water to excess land upon payment to the Federal Government of the full cost of providing the water service.

Alternative five is based on no acreage limitation or the repeal of the acreage limitation provisions and residency requirements of Reclamation law.

The EIS will consider other alternatives as well. Both the draft and final EIS will address the pros and cons of the alternatives; the draft statement is scheduled to be published December 15, 1980, and the final statement July 1, 1981.

#### Summary of Benefits

The major effect of the proposed rules will be related to the change in the size of farm operations on Federal Reclamation projects and to the number of family farms that may result. On many projects the change in the number and size of farms may not be significant, while on others where larger farm operations exist, there would be a noticeable increase in the number of farms and a reduction in their size. The change in the agricultural sector could result in economic effects on production

efficiency, improving the efficiency in some cases and reducing it in others; changes in income to the farm family both up and down; increases to the community income as the number of farms increases; and changes in the nature and number of employment opportunities. The EIS on the proposed rules will identify and analyze these and other impacts of the rules. While the reduction in large-scale farming may result in a change in the number of farming opportunities, the overall change in income to the agricultural sector may not be significant; however, DOI will complete a regulatory analysis of the proposed rules if it appears necessary after we have completed the draft EIS.

#### Summary of Costs

Until we complete the EIS, it is difficult to provide reliable estimates of the direct and indirect costs of the regulations to the sectors they affect. The net farm income of some farmers may be reduced as the size of their farms decreases, which may be offset by the income to the new farms that may develop. Increases may occur in the cost of administering the acreage limitations of law under the regulations by the Federal Government in record keeping, inspections, and monitoring irrigation water deliveries in projects involved. There may be an increase in the cost of public services in some areas where new farms may be established.

#### Sectors Affected

The principal effect of the regulations will be on the agricultural sector in the areas in the 17 Western States where the Reclamation projects are located. The regulations will apply to deliveries of irrigation water to over 12 million acres of land in about 150,000 farms in these projects. The main purpose of the regulations is to limit the land in a farm operation that is eligible to receive an irrigation water supply from a Federal project; however, the regulations also would impose other eligibility requirements on the landowner and farm operator. The change in the number and size of farms will result from a reduction in large agribusiness farm operations; the type and variety of crops grown may change, and new business opportunities in the agricultural communities can be expected to develop. The EIS will address the nature of these and other effects.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

The Department of Agriculture is cooperating in preparing the EIS on the proposed regulations.

#### Timetable

Draft EIS and Revised NPRM—  
December 15, 1980.

Public Hearings—December 15, 1980—  
March 16, 1981.

Regulatory Analysis—After December  
15, 1980, if required.

Final Rule—September 1981.

#### Available Documents

"Department of the Interior, Bureau of Reclamation, Acreage Limitation Rules and Regulations." NPRM—43 CFR 426, August 25, 1977.

"Environmental Assessment of the Impact of Proposed Rules and Regulations for Acreage Limitation Administration as published in the Federal Register, August 25, 1977." Prepared by the Bureau of Reclamation, January 1977.

The above documents are available at offices of the Water and Power, Resource Service, Washington, D.C.

#### Agency Contact

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#### DEPARTMENT OF JUSTICE

#### Law Enforcement Assistance Administration

Procedures relating to the  
implementation of the National  
Environmental Policy Act

#### Legal Authority

National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; Environmental Quality Improvement Act, as amended, 42 U.S.C. § 4371, *et seq.*; (Council on Environmental Quality, "Regulations to Implement the National Environmental Policy Act") 40 CFR 1500, *et seq.*

#### Statement of Problem

The National Environmental Policy Act (NEPA) requires regulatory agencies to consider the effect of their actions on the environment.

NEPA requires that each agency, before taking an action, analyze potential environmental effects and

prepare an Environmental Impact Statement (in cases where the environment may be affected) or a Finding of No Impact upon the proposed action on the environment.

The Law Enforcement Assistance Administration (LEAA) currently undertakes few projects which significantly affect the environment. In addition, LEAA adopted a policy in August 1979, prohibiting the use of its funds by State or local governments to undertake any new construction projects. Accordingly, we expect the number of projects necessitating the use of the NEPA regulations to be small. However, in accordance with the direction of the Council on Environmental Quality (CEQ) and the Supreme Court in *Andrus v. Sierra Club*, 47 USLW 4676 (June 11, 1979), LEAA is simplifying and clarifying these regulations to eliminate unnecessary expenditures of staff time and effort for compliance with the requirements of NEPA.

As a granting and contracting agency which allots funds to State and local agencies for criminal justice improvement programs, such as prison renovations, which may affect the environment, LEAA must have specific NEPA regulations. We anticipate that 28 CFR 19, the current codification of LEAA's NEPA regulations, will be substantially modified so that only those procedures which are specific to LEAA will be included, inasmuch as proposed Department of Justice and current CEQ regulations provide adequate guidelines in all other areas.

#### Alternatives Under Consideration

Alternative approaches are as follows:

(1) to add the current 28 CFR 19 to reflect supplementary procedures for complying with the new regulations of the CEQ;

(2) to remove 28 CFR 19 and replace it with updated and simplified procedures to conform with the new CEQ regulations and OMB policy on reduction and simplification of regulations.

Option one would do little to streamline the process of environmental assessment and would require time-consuming rulemaking procedures in accordance with the Administrative Procedure Act. Moreover, 28 CFR 19 is in many respects outdated and merely duplicates existing CEQ regulations, and LEAA feels it should be substantially changed.

Option two, though it requires the same rulemaking procedures, would effectively eliminate much of the duplicative work currently required by

the existing NEPA regulations, while preserving the basic objectives of NEPA. It would also reflect the fact that few of LEAA's current projects require detailed environmental review. Both applicants for funds and the agency itself would benefit from these simplified and clearer procedures.

#### Summary of Benefits

Reduced paperwork and processing time for funding projects will result in savings to the agency, to taxpayers, and to recipients of funds.

#### Summary of Costs

We do not expect to bear or cause any additional costs.

#### Sectors Affected

The regulations will affect all State and local agencies which are applying for LEAA funds.

#### Related Regulations and Actions

*Internal:* Proposed Department of Justice Procedures for Implementing the National Environmental Policy Act, 44 FR 93751, July 26, 1979.

*External:* Regulations of the Council on Environmental Quality, 40 CFR Parts 1500-1508. In accordance with the CEQ guidance, the new regulations will incorporate by reference other environmental statutes including: Fish and Wildlife Coordination Act, 16 U.S.C. § 661, *et seq.*; the National Historic Preservation Act of 1966, 16 U.S.C. § 470, *et seq.*; Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001, *et seq.*; Clean Air Act and Federal Water Pollution Control Act, 42 U.S.C. § 1857, *et seq.*; 33 U.S.C. § 1251, *et seq.*; Safe Drinking Water Act 42 U.S.C. § 300, *et seq.*; Wild and Scenic Rivers Act, 16 U.S.C. § 1271, *et seq.*; the Coastal Zone Management Act of 1972, 16 U.S.C. § 1451, *et seq.*; and other environmental review laws and executive orders.

#### Active Government Collaboration

We will request and consider seriously the views of the Department of Justice's Land and Natural Resources Division and Office of Legal Counsel and the Council on Environmental Quality in the Executive Office of the President.

#### Timetable

NPRM—November 30, 1979.  
Regulatory Analysis—not required.  
Final Rule—January 30, 1980.

#### Available Documents

None.

#### Agency Contact

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Fuel economy standards for model years 1982-85 light trucks

##### Legal Authority

The Motor Vehicle Information and Cost Savings Act, § 502(b), 15 U.S.C. § 2002 (1978).

##### Statement of Problem

In 1978 roughly half of the total petroleum consumed in the United States was used for transportation. The light truck fleet, which includes vehicles such as conventional pickups and vans, consumed approximately 20 percent of that amount. During the past ten years, light truck sales have grown dramatically. Although sales recently have declined, in part because of the poor gasoline mileage of those vehicles and the rising price of gasoline, the National Highway Traffic Safety Administration (NHTSA) expects them to return to their former high levels. Such increased sales mean that the amount of fuel consumed by light trucks will continue to increase. NHTSA has already set fuel economy standards for passenger cars in the 1981-84 model years. Without fuel economy standards for light trucks, the gap between the improving fuel efficiency of passenger cars and the low fuel efficiency of light trucks would widen, contrary to the national objective of fuel conservation.

In response to the Congressional mandate of Title V, Improving Automotive Efficiency, of the Motor Vehicle Information and Cost Savings Act (the Act), NHTSA already has established fuel economy standards for light trucks in the 1979-81 model years. In order to comply with the statutory requirements of the Act, fuel economy standards for 1982 trucks must be set no later than March 1980. To provide manufacturers with ample lead time to implement major improvements to their light trucks, the agency will also establish fuel economy standards for light trucks in the 1983-85 model years.

##### Alternatives Under Consideration

Specific information for developing the fuel economy standards is currently under development and is not available at this time. The final standard would be one which satisfies the statutory

criterion for maximum feasible average fuel economy and reflects technological feasibility, economic practicability, the impact of other Federal standards for motor vehicles, and the nation's need to conserve energy. NHTSA is assessing the capabilities of light truck manufacturers to meet various levels of fuel efficiencies and their associated costs. Simply extending the 1981 standard will not be an alternative unless it meets the criterion of maximum feasible average fuel economy.

#### Summary of Benefits

Setting fuel economy standards for light trucks will reduce the amount of gasoline those vehicles consume. Reduced gasoline consumption will, in turn, reduce the operating costs of those vehicles over their lifetime. The actual benefits of the proposed regulation would be in a direct proportion to the improvement in fuel efficiency required of the new light truck fleet. NHTSA anticipates that the decreased demand for oil would have a favorable impact on the balance of trade, but the agency cannot determine the actual amount of fuel that will be saved until it establishes prospective standards. However, to illustrate the benefits of the current standards for fuel economy, NHTSA estimates that the standard it set for light trucks in the 1980-81 model years will save 8 billion gallons of gasoline over the lifetime of these trucks.

#### Summary of Costs

NHTSA is currently developing information on the costs associated with the fuel economy standards. Specific information is not available at this time. The general economic effect would probably be as follows. Vehicle manufacturers would incur capital expenditures and increases in variable manufacturing costs to implement technologies for fuel efficiency. The absolute amount of such increases depends upon the level of the standards. Material suppliers would experience changes in demand. For example, the substitution of aluminum for steel would increase the demand for aluminum and reduce the demand for steel. Components for new vehicles such as computerized controls to improve the efficiency of the engine may be installed. Thus, demand for these items would increase. The petroleum industry would face a reduced increase in demand for gasoline. State and local governments would face a lower rate of increase in revenue from gasoline taxes due to a decrease in the rate of growth of the demand for gasoline. The initial purchase price of light trucks may

increase due to potentially higher manufacturing costs. Buyers would also realize savings in operating costs as fuel efficiency improves. For example, NHTSA estimates that the current fuel economy standards for 1980-81 light trucks will result in an increase in retail price in the range of \$60 per truck. This relatively small increase compares to a reduction in the lifetime operating cost of about \$600 per vehicle, due to the reduction in the gasoline they consume. The effect of the rules on the GNP, inflation, urban areas, and employment will depend directly on the level of fuel economy set in the standards.

#### Sectors Affected

The standards would affect manufacturers of light trucks, suppliers of materials and components, buyers of new light trucks, the petroleum industry, and State and local governments.

#### Related Regulations and Actions

*Internal:* NHTSA has already issued standards for fuel economy for light trucks in model years 1979, 1980, and 1981 (49 CFR 533).

*External:* The Environmental Protection Agency (EPA) has issued regulations governing how fuel economy in motor vehicles is to be measured (40 CFR 600). The EPA also has issued regulations governing emissions from light trucks (40 CFR 86) and recently issued an NPRM proposing new emission standards for light trucks in 1983 and later model years (44 FR 40784, July 12, 1979). The Federal Trade Commission has issued guidelines governing the advertising of fuel economy for motor vehicles (16 CFR 259).

#### Active Government Collaboration

NHTSA principally coordinates its program for fuel economy standards with the Department of Energy and the Environmental Protection Agency. NHTSA also reviews the program with the Council on Wage and Price Stability.

#### Timetable

NPRM—December 1979.  
Final Rule—March 1980.

#### Available Documents

No documents are available. During the rulemaking, NHTSA will prepare and make available to the public a Regulatory Analysis, an Environmental Impact Statement, and a Rulemaking Support Paper, which will contain information on the technical and economic basis of the rulemaking.

#### Agency Contact

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#### DOT—Coast Guard

Construction standards for the prevention of pollution from new tank barges due to accidental hull damage; and regulatory action to reduce pollution from existing tank barges due to accidental hull damage

#### Legal Authority

Port and Tanker Safety Act of 1978, P.L. 95-474, § 5, 92 Stat. 1480 (1978).

#### Statement of Problem

Data gathered by the Coast Guard show that, from 1973 through 1977, the total volume of oil spilled by tank barges was about 174,000 barrels. Approximately 85 percent of the oil spilled resulted from hull damage, which occurred as a result of groundings and collisions in the normal course of barge movements. Since barges operate mainly on the inland river system, most of the oil spilled by tank barges enters highly sensitive inland waters where the effect on the marine environment is more significant than it would be on the high seas. While the amount of pollution entering the waters from tank barges fluctuates annually, it is not decreasing in general. Thus, the present regulations dealing with pollution prevention, which essentially regulate only loading and unloading operations, are insufficient to reduce oil pollution from tank barges. Based on a study entitled "Tank Barge Oil Pollution Study," prepared by Automation Industries, Inc., the Coast Guard has concluded that the lack of construction standards for tank barges is a major factor in the pollution they cause. The Coast Guard believes that barges need the protection of a double hull to prevent cargo discharge resulting from groundings and the minor collisions that breach the hulls of single skinned barges.

#### Alternatives Under Consideration

In 1971 the Coast Guard proposed a requirement for double walls on new tank barges constructed for the carriage of oil in specified trades. In order to accelerate the retirement of single hull barges already in service, it contained a provision that would have precluded the complete rebuilding of existing vessels, and would have allowed only limited

repair to damaged areas on these vessels. This provision was designed to gradually reduce the number of existing single hull barges. Another proposed alternative was to specify a date after which owners and operators could not use single hull barges.

Because of the extensive negative comments we received, we did not impose the double-wall construction requirement for new tank barges at that time. Instead, the Coast Guard initiated two studies. The first, "Alternative Inland Tank Barge Designs for Pollution Avoidance," developed design and construction alternatives and evaluated their effectiveness. The second, "Tank Barge Study," evaluated design, construction, and equipment standards for tank barges which carry oil. These studies have convinced the Coast Guard that a double hulled tank barge fleet is necessary to prevent pollution due to hull damage.

The present barge fleet consists of about 1,200 full double hull barges, 2,200 single hull barges, and 428 barges with partial double skins. Hastening the retirement of single hull barges could significantly affect both the economic viability of many individual tank barge operators and the tank barge industry's collective ability to respond to the nation's need to transport bulk liquid cargo. The comments we received in response to the 1971 NPRM indicated that, while the industry supported the intent of the regulations to prevent pollution, it strongly objected to the methods we proposed to accelerate the retirement of existing single hull vessels and to substitute double hulled barges. We received no comments suggesting economically acceptable ways to accelerate the retirement of these vessels.

The Coast Guard is aware that the problems and costs associated with constructing new barges differ greatly from the problems and costs associated with modifying an existing barge. For this reason, the Coast Guard has issued an ANPRM requesting comments and information on how to minimize the pollution threat from existing barges in the most cost-effective way. The alternatives we considered in the ANPRM are early retirement of vessels, conversion to other service, restriction of routes, increased inspection standards, and reduction of the numbers of barges towed together as a single unit.

In the case of new construction, the NPRM proposed two alternatives to the double hull approach: taking no action or requiring the use of heavier internal structures in either selected areas of the vessel or, overall, to make the hulls

more resistant to penetration. We selected the double hull alternative as a result of information that was gathered in a joint Coast Guard/Maritime Administration study known as the "1974 Tank Barge Study."

#### Summary of Benefits

The Coast Guard has concluded that double hulls would be 95 percent effective in preventing pollution due to hull damage. This conclusion is based on the report we mentioned previously, the "1974 Tank Barge Study."

#### Summary of Costs

The cost of a double hull inland tank barge would range from \$146,000 to \$425,000 more than for a single hull inland barge of comparable size. In 1978, added costs for full double hulls on ocean barges ranged from \$700,000 to \$1,700,000 for each barge.

The costs for modifying existing barges are more difficult to determine. The proposals in the ANPRM would cost approximately \$222 million dollars in total, or a 31 percent increase over present expenses for the tank barge industry. The ANPRM solicits estimates of these costs as well as costs the industry would incur for activities such as oil recovery and cleanup resulting from spills related to hull damage.

#### Sectors Affected

Obviously, the largest impact of these regulations would be on owners and operators of barges that transport oil. However, compliance costs would be passed on to some segments of the consuming public in the form of higher rates for transportation and products.

#### Related Regulations and Actions

*Internal:* The Coast Guard is also considering double hull requirements as a possible solution to spillage of hazardous materials.

*External:* The Environmental Protection Agency is developing restrictions on the handling and transport of hazardous materials, which may make double hulls more economically attractive to barge owners and operators.

#### Active Government Collaboration

The Coast Guard has informed the Environmental Protection Agency and the Maritime Administration of its regulations in this area.

#### Timetable

- NPRM for existing tank barges—spring 1980.
- Final Rule for new tank barges—spring 1980.

#### Available Documents

Karlson, E. S., et al., "Alternative Inland Tank Barge Designs for Pollution Avoidance," May 22, 1974.

"Polluting Incidents In and Around U.S. Waters," annual reports for 1971 through 1977. Coast Guard publication number C.G. 487.

Joint Coast Guard/Maritime Administration Study, "Tank Barge Study," October 1974. National Technical Information Service number COM-75-10284/AS.

Bender, A., et al., "Tank Barge Oil Pollution Study," prepared for the Coast Guard by Automation Industries, Inc., 1978.

NPRM—36 FR 24960, December 24, 1971 (superseded).

NPRM—44 FR 34440, June 14, 1979, for new construction.

ANPRM—44 FR 34443, June 14, 1979, for existing construction.

Draft Regulatory Analysis and Environmental Impact Statement, "Design Standards for New Tank Barges and Regulatory Analysis for Existing Tank Barges to Reduce Oil Pollution Due to Accidental Hull Damage," May 1979. Documents available from agency contact.

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## ENVIRONMENTAL PROTECTION AGENCY

### Office of Air, Noise, and Radiation

Gaseous emission regulations for 1985 and later model-year heavy-duty vehicles

#### Legal Authority

The Clean Air Act Amendments of 1977, § 202(a), 42 U.S.C., § 7521(a)

#### Statement of Problem

Heavy-duty vehicles emit significant amounts of oxides of nitrogen (NO<sub>x</sub>). For this reason, in the 1977 amendments to the Clean Air Act, the Congress has required that manufacturers of heavy-duty vehicles (those vehicles that have gross vehicle weight ratings above 8,500 pounds) reduce NO<sub>x</sub> emissions by 75 percent from the levels they emitted in 1973 (baseline levels.) This reduction is to take effect for 1985 and later model-years.

In the atmosphere, the NO<sub>x</sub> emitted from all sources is converted to NO<sub>2</sub>.

(nitrogen dioxide) by direct reaction with oxygen and by photochemical processes. NO (nitric oxide) is an important component of the photochemical reactions which lead to the formation of smog. In addition, elevated levels of NO<sub>2</sub> are associated with both long-term and short-term adverse effects on the human respiratory system. NO<sub>2</sub> in the atmosphere also causes visibility reductions and gives a brownish color to the air.

#### Alternatives Under Consideration

EPA is considering two major alternatives at this time. They are:

1. Implementing an oxides of nitrogen standard for heavy-duty vehicles that reflects the 75 percent reduction mandated in the Clean Air Act; and
2. Revising NO<sub>x</sub> standards (making them either less stringent or more stringent), as provided under § 202(a) of the Clean Air Act.

The Clean Air Act (as amended August 1977) directs EPA to set standards for NO<sub>x</sub> for the 1985 model-year that reflects a 75 percent reduction from 1973 levels. However, there are provisions in the Act that allow EPA to set either more stringent standards or less stringent standards. EPA can make such revisions to the standards if it finds that the emission standards can or cannot be achieved by available technology at reasonable cost. EPA is currently evaluating both of these alternatives in formulating this regulation.

#### Summary of Benefits

Based on the adoption of 75 percent reduction standards, the primary benefit from this regulation would be a 34 percent reduction in the emission of NO<sub>x</sub> from mobile sources in urban areas.

This reduction would be accomplished by a lowering in ambient air levels of NO<sub>x</sub>, and associated benefit to public health and welfare. The exact degree of air quality improvement has not been quantified at this time.

#### Summary of Costs

EPA is still studying the cost effects associated with this rulemaking and cannot accurately estimate the cost at this time. However, our preliminary estimates suggest that total costs for manufacturers and users will exceed \$100 million per year during the first five years of implementation. Therefore, we will develop a "regulatory analysis" for this rulemaking that will include an in-depth assessment of both the economic and environmental impact of the regulations.

#### Sectors Affected

This rulemaking will affect three industrial sectors: heavy-duty engine manufacturers, heavy-duty vehicle manufacturers, and purchasers/users of heavy-duty vehicles.

Reduction in ambient pollution levels of NO<sub>x</sub> will affect, in a positive way, the public at large.

#### Related Regulations and Actions

*Internal:* "Certification and Test Procedures for Heavy-Duty Engines for 1979 and Later Model Years," 40 CFR Part 86.

EPA is also developing:

- (1) Proposed emission regulations for 1983 and later model-year light-duty trucks,
- (2) Proposed gaseous emission regulations for 1983 and later model-year heavy-duty engines (hydrocarbon and carbon monoxide emissions only),
- (3) Evaporative emission (those emissions emitted into the atmosphere from the vehicle's fuel system) regulations for heavy-duty gasoline vehicles, and
- (4) Measurement procedures and standards for particulate emissions from heavy-duty diesel engines.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—May 1980.  
Public Hearing—July 1980.  
Final Rule—December 1980.  
Regulatory Analysis—May 1980.

#### Available Documents

None.

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#### EPA-OANR

Gaseous emission regulations for 1983 and later model-year heavy-duty vehicles

#### Legal Authority

The Clean Air Act, §§ 202, 206, 207 and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601

#### Statement of Problem

Emissions of total hydrocarbons (HC) and carbon monoxide (CO) from heavy-duty vehicles are a significant fraction of total emissions from all vehicles.

(Heavy-duty vehicles are vehicles that have gross vehicle weight ratings above 8,500 pounds.) For this reason, the Congress has required, and EPA has proposed, that emissions of HC and CO from heavy-duty vehicles be reduced by 90 percent from levels of emissions in 1969 (baseline levels) for gasoline engines for the 1983 and later model-years. In this same rulemaking, EPA has proposed a new procedure which we will use to demonstrate that heavy-duty vehicle emissions are actually reduced by 90 percent. This "transient test" procedure estimates emissions from heavy-duty vehicles as they are operated in actual use; that is, under "stop and go" conditions. The present "steady-state" test procedure for heavy-duty vehicles only measures emissions under certain constant speed conditions. While the present testing procedure has proved to be adequate at present levels of emission control, at the 90 percent reduction level this procedure cannot adequately predict the emissions from heavy-duty vehicles in actual use.

If EPA were to take no action to reduce heavy-duty vehicle emissions down to the 90 percent reduction level, we expect that in 1995 these vehicles would contribute 16 percent of all HC emissions from vehicles in urban areas, up from 8 percent in 1975. Similarly, CO emissions from heavy-duty vehicles would climb from 9 percent in 1975 to 24 percent by 1995.

Both HC and CO emissions are related to adverse health effects. HC emissions aid in the formation of ozone, an irritant that impairs respiratory functions. CO replaces oxygen in the blood, and adversely affects the capacity of the blood to carry oxygen to the body.

#### Alternatives Under Consideration

On February 13, 1979, EPA published a proposal calling for a 90 percent reduction in emissions from heavy-duty vehicles, based on testing using a new transient test procedure. This was the level which Congress mandated. Therefore, before proposing regulations, we considered only two alternatives:

- (1) To require standards more stringent than 90 percent; or
- (2) To require a 90 percent reduction in HC and CO as measured by the existing steady-state test procedures.

Because of the limited time available for proposing these regulations, EPA did not conduct an in-depth study of the first alternative. We were confident that the technological assessments that had led Congress to specify 90 percent reductions were accurate assessments. In addition, we were concerned that if we required more stringent standards,

manufacturers' compliance costs would increase substantially.

EPA did not propose the second alternative, because it considers the transient test procedure more representative of actual operating conditions than the present procedure, and believes that it will provide greater assurance that heavy-duty vehicles are meeting the standards on the road. The transient cycles were generated from actual in-use data and evolved from a six-year study of the problem by EPA.

#### Summary of Benefits

If we promulgate the regulations as proposed, by 1995 urban areas should realize reductions in vehicular emissions up to 11 percent for HC and up to 21 percent for CO, as compared to emission levels in 1975. These reductions correspond to improvements in ambient air quality of two percent for ozone and six percent for CO.

#### Summary of Costs

EPA estimates that the proposed regulations will increase aggregate five-year costs—1983-87—(including operating costs for engines over their useful lives) by \$2.5 billion for manufacturers and users of heavy-duty vehicles. (This estimate is based on the present value of the dollar, discounted at an annual rate of 10 percent.)

EPA anticipates that to comply with the 1983 standards, gasoline-fueled engines will require oxidation catalyst systems and engine calibration changes, in addition to the exhaust gas recirculation (EGR) and air injection systems already in use. We estimate that the costs for added systems to control emissions will be \$171 per engine. Adding costs for certification testing, assembly-line testing, and testing facilities, the increase in the purchase cost per engine that will be attributable to this proposed action will be \$204. This cost is equivalent to 1 to 2.5 percent of the price of a new gasoline-fueled heavy-duty vehicle. The increased costs of unleaded fuel, catalyst replacement (assuming that 60 percent of catalysts in use will have to be replaced), and inspection and maintenance fees may total an additional \$1,016 (1979 dollars discounted to January 1, 1983, assuming a 10 percent annual discount rate) over the useful life of a gasoline-fueled heavy-duty vehicle. The increase in cost from using unleaded fuel (because of expected use of catalysts on gasoline-fueled engines) is the major cost that will result from these proposed regulations. In fact, under the proposed regulations, more than 80 percent of the purchase and

operating costs per vehicle is attributable to the use of unleaded fuel.

At present, we anticipate that diesel engines can meet the proposed 1983 standard with minor changes to engine fuel injectors and calibration. EPA estimates that these changes will cost an average of \$25 per engine. The agency estimates that the total increase in the purchase cost resulting from these proposed regulations will be \$185 per engine. (This figure includes amortized facility costs, certification costs, and testing costs.) This cost is equivalent to 0.2 to 1 percent of the price of a new diesel-powered heavy-duty vehicle. Because catalysts will not be required for these vehicles, we expect these regulations to cause no increase in lifetime operating costs.

#### Sectors Affected

The proposed regulations will affect three industrial sectors: the manufacturers of heavy-duty engines; the manufacturers of heavy-duty vehicles, and the purchasers/users of heavy-duty vehicles.

The general public, particularly in urban centers, will also be favorably affected through reduced levels of air pollution.

#### Related Regulations and Actions

*Internal:* The regulations which are in effect now and which we will modify in this action are entitled, "Certification and Test Procedures for Heavy-Duty Engines for 1979 and Later Model Years" (40 CFR Part 86).

EPA is also developing:

- (1) Proposed emission regulations for 1983 and later model-year light-duty trucks,
- (2) Evaporative emission (those emissions emitted into the atmosphere from the vehicle's fuel system) regulations for heavy-duty gasoline-fueled vehicles,
- (3) More stringent oxides of nitrogen standards for 1985 and later model-year heavy-duty engines, and
- (4) Procedures and standards for measuring particulate emissions from heavy-duty diesel engines.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

Final Rule—before December 31, 1979.

#### Available Documents

NPRM—44 FR 9464, February 13, 1979.

All documents pertaining to this proposed regulation, including the Draft Regulatory Analysis, transcripts of the Public Hearings, comments on the

proposal, etc., may be found in Public Docket OMSAPC-78-4 at the Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street, S.W., Washington, DC 20460.

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#### EPA-OANR

Listing of coke oven emissions as a hazardous air pollutant and development of emission limitations  
Legal Authority

The Clean Air Act Amendments of 1977, § 112, 42 U.S.C. § 7412

#### Statement of Problem

Section 112 of the Clean Air Act specifically requires the Administrator of the Environmental Protection Agency (EPA) to make a regulatory decision regarding control of atmospheric emissions of polycyclic organic matter (POM). On the basis of a health risk assessment of these emissions, conducted by EPA and supported by a similar assessment of coke oven emissions, the Administrator is considering listing POM as a hazardous air pollutant under section 112 of the Act. Currently, EPA is in the process of developing regulations limiting POM emissions from coke production facilities.

Chemically, POM refers to that class of organic compounds that contains two or more fused aromatic rings. Fused aromatic rings are benzene rings (cyclic rings of hydrogen and carbon) that are joined together and may or may not have other substances substituted for the carbon in the rings. Of major concern are the POMs formed in the combustion of organic matter. These include the polynuclear aromatic hydrocarbons [particularly benzo(a)-pyrene (BaP)] and their nitrogen analogs (e.g., aza and imino arenes). In assessing the health risk of POM, we judged BaP to be a satisfactory indicator of, and surrogate for, POM.

We have used data from epidemiological studies and ambient monitoring to estimate the health risk from POM (BaP) emissions from coke plants. These data indicate that the 1975 POM (BaP) emission rate from coke plants would result in approximately 80 cancer deaths per year in the population not exposed to it in their occupations. Since 1975, emission control has improved at coke plants because of

State regulations, consent agreements, Occupational Safety and Health Administration (OSHA) regulations, and industry initiatives. As a result of these actions, the 1975 risk figure of about 80 deaths per year is being significantly reduced. Additional emission control could reduce the remaining health risk. Therefore, EPA is considering promulgating regulations for at least three POM (BaP) sources at new and existing coke plants: (1) wet-coal charging operations, (2) topside leaks, and (3) oven door leaks.

#### Alternatives Under Consideration

The regulations we are considering would, at a minimum, limit emissions to levels that are attainable with "best available control technology" as it is defined by EPA's Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer. (See available documents.) The types of controls on which we would base the standard will vary among the sources within the coke plant but may include revised operating and maintenance procedures as well as modifications to equipment and application of control devices. The alternatives that we are considering have to do with the degree of control we will require.

#### Summary of Benefits

The direct benefit will be a decreased incidence of cancer from POM emissions from coke plants.

Indirect benefits include decreased adverse health and welfare effects associated with other pollutants emitted from coke plants (e.g., particulates, benzene). These pollutant emissions will also be reduced by the techniques designed to control POMs.

#### Summary of Costs

The total cost of installing controls resulting from an EPA regulation of POM from coke ovens is not well defined at present, but may exceed \$50 million per year. Costs at individual plants will depend on plant size, existing control systems, other applicable regulations, and the stringency of the EPA standard.

#### Sectors Affected

The population that will benefit is the approximately 50,000,000 people who are exposed to atmospheric emissions from the Nation's 65 coke plants. These plants are located primarily in Ohio, Indiana, and Pennsylvania. Costs will be borne primarily by the major iron and steel producers (SIC 3312), which own about 75 percent of the Nation's coke production capacity.

#### Related Regulations and Actions

*Internal:* Ambient air quality standards for particulate and water effluent guidelines are in effect. EPA has proposed a "Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer."

*External:* The Occupational Safety and Health Administration standards that limit worker exposure to coke oven emissions are in effect.

#### Active Government Collaboration

The Occupational Safety and Health Administration and the Environmental Protection Agency have worked together to assess the need for EPA action. Their conclusion was that the EPA standards are needed and will result in additional benefits to public health.

#### Timetable

Listing of POM under section 112—  
March 1980.

Regulatory Analysis—October 1980.

NPRM—December 1980.

Public Hearing—January 1981.

Final Rule—October 1981.

#### Available Documents

Interagency Regulatory Liaison Group Development Plan (EPA—November 1978) National Emission Standards for Hazardous Air Pollutants; Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer, 44 FR 58642, October 10, 1979.

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#### EPA—OANR

National emission standards for hazardous air pollutants—benzene.

#### Legal Authority

The Clean Air Act Amendments of 1977, §§ 112, 301(a), 42 U.S.C. § 7412.

#### Statement of Problem

Benzene is a volatile hydrocarbon compound which is present in gasoline and is a basic chemical used in the production of other organic compounds. Exposure to benzene has been related to the occurrence of a number of blood disorders, including leukemia (a cancer of the blood-forming system), various cytopenias (decreased levels of an element in the circulating blood), aplastic anemia (a nonfunctioning bone marrow), and potentially inheritable chromosomal aberrations. Because these

effects are serious and generally irreversible, the EPA Administrator listed benzene as a hazardous air pollutant under § 112 of the Clean Air Act on June 8, 1977.

EPA is developing standards for controlling benzene from maleic anhydride plants, refineries, chemical plants, storage facilities, ethylbenzene/styrene production, and coke-oven by-product plants. Emission points within these facilities include process equipment leaks, vents, and stacks. Maleic anhydride plants account for about one-third of the benzene emissions from stationary sources and are by far the largest source of benzene emissions in the chemical manufacturing industry.

Failure to control benzene emissions could increase the probability of incidence of leukemia in people who live near facilities which emit benzene.

#### Alternatives Under Consideration

For hazardous pollutants, § 112 of the Clean Air Act requires EPA to establish emission standards which provide an ample margin of safety to protect public health. EPA is considering alternative standards which include percentage limitations on the uncontrolled emissions, changes in processes, changes in feedstocks, improved processing equipment that is designed to minimize emissions, and leak-detection and repair programs.

#### Summary of Benefits

Standards to reduce benzene emissions would decrease the incidence of leukemia, blood cell deficiencies, and aplastic anemia.

Indirect effects of the standard would be decreased emissions of other toxic or oxidant-forming hydrocarbons and the accompanying lessening of the environmental problems that are associated with these pollutants.

#### Summary of Costs

The costs to implement standards that would limit benzene emissions depend on the regulatory alternatives that we select as the basis for each standard. Precise cost projections are not yet available for most benzene sources. For maleic anhydride manufacture, EPA has projected rough control cost estimates, however. A standard based on 99 percent control would result in nationwide capital costs of about \$9.1 million, an increase in yearly costs of about \$4.5 million, a potential price increase of 1.7 percent, and an increase in energy use of 85,000 barrels of oil per year. The energy is consumed to operate the control equipment. A 97 percent control standard would involve capital

costs of \$6.6 million, yearly costs of about \$2.5 million, a potential price increase of 1.2 percent, and an increase in energy use of almost 50,000 barrels of oil per year.

Generalized projections for controlling fugitive emissions (i.e., leaks from refineries and certain chemical plants) vary from \$1 million to \$17 million for capital costs, and yearly increased costs of up to \$3.5 million.

We are studying other categories of sources, but we have not yet generated precise cost information in the current early stages of the project.

#### Sectors Affected

The people that benzene emissions affect most live in the East and along the Gulf of Mexico. Industries that the regulations will affect include: refineries; benzene storage facilities; industries that produce organic compounds such as maleic anhydride, ethylbenzene/styrene; and coke oven by-product plants.

#### Related Regulations and Actions

*Internal:* EPA has proposed a "Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer."

*External:* In September 1976, and again in December 1976, the National Institute of Occupational Safety and Health (NIOSH) recommended to the Occupational Safety and Health Administration (OSHA) that Federal occupational standards for benzene be reduced from a 10-ppm (parts per million) level for 8 hours to 1 ppm. OSHA promulgated a standard on February 10, 1978, which reduced the exposure limit to 1 ppm (8-hour average). That standard is currently being litigated.

#### Active Government Collaboration

The Interagency Regulatory Liaison Group Committee on Benzene has met periodically for the past 2½ years. Chaired by EPA, the Committee meetings have been attended by representatives of the Consumer Products Safety Commission, Occupational Safety and Health Administration, National Institute of Occupational Safety and Health, and the Food and Drug Administration.

#### Timetable

##### Maleic Anhydride:

Regulatory Analysis—November 1980.  
NPRM—January 1980.  
Public Hearing—February 1980.  
Final Rule—November 1980.  
Refinery and Chemical Industry Fugitive Emissions:  
Regulatory Analysis—March 1980.

NPRM—May 1980.

Public Hearing—June 1980.

Final Rule—March 1981.

##### Storage Facilities:

Regulatory Analysis—June 1980.

NPRM—September 1980.

Public Hearing—October 1980.

Final Rule—August 1981.

##### Ethylbenzene/Styrene Production:

Regulatory Analysis—April 1980.

NPRM—June 1980.

Public Hearing—July 1980.

Final Rule—April 1981.

##### Coke Oven By-Product Plants:

Regulatory Analysis—September 1980.

NPRM—November 1980.

Public Hearing—December 1980.

Final Rule—September 1981.

#### Available Documents

At the time of NPRM, the following documents may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711, telephone number (919) 541-2777:

"Benzene Emissions from Maleic Anhydride Plants—Background Information Document, Volume I."

"Assessment of Health Effects of Benzene Germane to Low Level Exposure."

"Assessment of Human Exposures to Atmospheric Benzene."

"Carcinogen Assessment Group's Report on Population Risk to Ambient Benzene Exposures."

"National Emission Standards for Hazardous Air Pollutants; Policy and Procedures for Identifying, Assessing and Regulating Airborne Substances Posing a Risk of Cancer," 44 FR 58642, October 10, 1979.

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#### EPA-OANR

Noise emission standard for newly manufactured motorcycles

#### Legal Authority

Noise Control Act of 1972, §§ 6 and 8, 42 U.S.C. § 4901.

#### Statement of Problem

Motorcycles are one of the greatest causes of citizen noise complaints in this country. For example, in a recent EPA urban noise survey, respondents cited sources of traffic noise, particularly motorcycles, as the most annoying of all noise sources.

The sound levels of recently manufactured street motorcycles range as high as 85 decibels measured at fifty feet, some are as low as 76 dB, and about half are approximately 80 dB. The sound levels of some off-road motorcycles are as low as 66 dB, but many are up to 10 dB higher. We recognized at the time we identified motorcycles as a major source of noise that much of the noise is from motorcycles with modified exhaust systems. This "modification" problem consists of two parts: alterations to original equipment exhaust systems (tampering), and the availability and use of replacement systems with poor muffling performance. Motorcycles which are modified by either method often exceed the noise levels of newly manufactured motorcycles by 10 to 20 decibels.

Despite the modification problem, however, studies indicate that the unmodified motorcycles, if not quieted below current levels, will become the single loudest source of traffic noise when other vehicles are quieted as a result of EPA's program to reduce traffic noise. Noise from motorcycles that are used in off-road environments constitute a major noise problem, not only in wilderness areas, but also in backyards, vacant lots, and other near-residential areas. EPA has identified continuous sound levels in excess of 55 dB (or the non-continuous sound energy equivalent) to be sufficient to cause harmful health and welfare effects to people.

#### Alternatives Under Consideration

On March 15, 1978, EPA proposed noise regulations for newly manufactured motorcycles and replacement exhaust systems intended for use on these regulated motorcycles. The proposed regulations require that new motorcycles not exceed 63 dB beginning in 1980, 80 dB in 1982, and finally 78 dB in 1985. Later effective dates, yet to be determined, will be established in the final regulations.

(1) The major alternatives to the proposed regulations are: (a) setting a less stringent standard than 78 dB and/or, (b) extending the schedule for compliance. Based on docket comments, hearing testimony, and staff analysis, EPA considers the proposed standards and implementation schedules to be achievable by all current motorcycle manufacturers. However, there is reason to believe that smaller manufacturers, AMF/Harley-Davidson, the sole U.S. manufacturer (6 percent of the total U.S. market), and several European firms may encounter adverse economic effects in complying with the proposed

standards and the schedule of effective dates. A less restrictive standard of 80 dB could achieve up to 90 percent of the benefits of the 78 dB standard at reduced cost to the industry, and would affect some manufacturers less. It could, however, result in motorcycles standing out as the loudest source of noise from surface transportation within the urban residential/suburban environment as other sources become quieter in the coming years. Extending the time schedule for compliance with the 78 dB standard could also lessen the regulation's economic effect upon some manufacturers.

(2) Since a major cause of the current motorcycle noise problem arises from modifications to exhaust systems (either by tampering or by replacement of stock mufflers with less effective ones), one option is that of reserving Federal authority and supporting State and local noise enforcement programs exclusively. The Agency's studies have shown, however, that reductions in the noise emissions of new motorcycles, when combined with exhaust system standards and in-use enforcement programs, are the most effective means of achieving the desired reductions in noise from motorcycles over the next several decades. In addition, most State and local governments with voluntary active in-use enforcement programs have called for Federal regulations requiring reduced noise emissions from new motorcycles.

In addition, local resources to enforce noise control may be limited, so that some areas will not have the benefit of reduced traffic noise without Federal regulations.

(3) An alternative to setting Federal emission standards would be to require that manufacturers label new motorcycles with their noise emission levels. This would facilitate the setting of both new product and in-use emission standards for motorcycles by concerned States and localities as opposed to the Federal Government. However, this would also likely bring about a proliferation of motorcycle emission standards at different levels of stringency, with different compliance schemes, and possibly even different test procedures, all of which each motorcycle manufacturer and manufacturer of replacement exhaust systems would have to comply with in order to sell his products in all States and localities.

Both options two and three would require a change in the Act or a determination by the Administrator that motorcycles are not a major source of noise or that control is not technically feasible. Neither determination would

be supported by the facts as the Agency now understands them.

#### Summary of Benefits

At the 78 dB regulatory level, the Agency estimated that the extent and severity of outdoor speech interference that is attributable to motorcycle noise would be reduced from current levels by 55-75 percent, and that the incidence of disturbance of sleep would fall by 50-65 percent. These figures assume that regulation of replacement exhaust systems would reduce the numbers of exhaust-modified motorcycles from the recently estimated 12 percent of the street motorcycle population (nationwide) to between 3 and 7 percent.

#### Summary of Costs

The estimated increase in the purchase price of motorcycles that the proposed regulations would cause was ten percent (\$140) for street motorcycles and seven percent (\$75) for off-road motorcycles, with a total annualized cost of \$202 million. The estimated increase in purchase price for replacement exhaust systems was 50 percent (\$50) over current stock replacement prices, with a total annualized cost of \$22 million. The figures above include manufacturer's administrative and testing costs, which EPA estimated to average less than two dollars per motorcycle sold.

Thus, we estimated the total annualized cost of the regulation, as proposed, to be \$224 million.

#### Sectors Affected

This regulation will affect motorcycle manufacturers and manufacturers and distributors of motorcycle mufflers. These sectors will be affected to the extent that their products require application of quietening technology. Notably, the Japanese motorcycle manufacturers and the larger U.S. motorcycle muffler manufacturers have devoted substantial resources toward creating a quieter product. Their dealers and distributors should experience the least difficulty in producing a quieter environment for the public.

#### Related Regulations and Actions

*Internal:* Noise emission standards for newly manufactured medium and heavy trucks as well as interstate motor carriers are in effect. We have published proposed standards for buses over 10,000 pounds Gross Vehicle Weight Rating (GVWR) and we expect to finalize them in early 1980. EPA is also investigating noise emission standards for newly manufactured tires and light vehicles. In addition, we are

investigating, and intend in the future to issue more stringent regulation revisions for medium and heavy trucks.

*External:* None.

#### Active Government Collaboration

National Highway Traffic Safety Administration of the Department of Transportation.

#### Timetable

Final Rule—Exact date not available at time of this publication.

The regulation as proposed applied to motorcycles manufactured after January 1, 1980. We will establish a later date, yet to be determined, in the final regulations.

Regulatory Analysis—concurrent with the Final Rule

#### Available Documents

NPRM—43 FR 10822, March 15, 1978  
"Background Document for Proposed Motorcycle Noise Emission Regulations;" U.S. Environmental Protection Agency, November 1977  
Available from EPA Public Information Center (PM-215)  
Washington, D.C. 20460

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#### EPA—OANR

Noise emission standard for newly manufactured wheel and crawler tractors

#### Legal Authority

The Noise Control Act of 1972, §§ 6 and 8, 42 U.S.C. § 4905.

#### Statement of Problem

There are currently in excess of 2.4 million active construction sites, exclusive of highway construction, within the continental limits of the United States. This includes residential, mixed residential-commercial, industrial, and public works (sewer, water, electric, gas and street repair) construction. We estimate, based on national surveys of the locations of these construction sites and the average population densities typically surrounding such sites, that more than 37 million people are exposed to noise exceeding levels which the Environmental Protection Agency (EPA) has determined are requisite to protect the public health or welfare with an

adequate margin of safety. Further, our studies show that the class of construction equipment that the industry identifies as wheel and crawler tractors (frequently referred to as "bulldozers," "loaders" and "loader-backhoes") are the single largest contributor (greater than 16 percent) to the total noise at a construction site.

Congress showed its concern about the adverse effects of construction site noise on the public in § 6 of the Act. This section requires the Administrator of EPA to publish proposed regulations which set noise emission limits (for four categories of products, specifically including construction equipment) requisite to protect the public's health and welfare taking into account the magnitude and conditions of use of the products alone or in combination with other noise sources, the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance.

#### Alternatives Under Consideration

The major alternative under consideration is setting noise level limits, phased with respect to stringency and effective dates, based on machine type and horsepower rating. The differences among allowable noise levels would be based on the nature of the different machines and their uses, the levels of noise they emit that affect people, the difficulties of applying necessary control technology, and the attendant costs and potential economic effects. The Noise Control Act requires EPA to proceed to a final regulation (after NPRM) unless control is not technically feasible. Thus, we are not considering non-regulatory alternatives. Comments on the proposed rule that we received during a 90-day public comment period are now under review.

#### Summary of Benefits

The rule, as proposed, (42 FR 132; July 11, 1977) would establish noise emission levels not to be exceeded and dates they would become effective for wheel and crawler tractors that are used in construction. As proposed, the rule would result in approximately a 12 percent reduction in the severity and extensiveness of noise effects on an estimated 37 million people who are now exposed to noise from construction sites.

#### Summary of Costs

We estimate that the increase in annualized costs to industry to comply with the proposed regulation would be about \$228.0 million. This compliance cost includes capital expenditures for changes in the manufacturing process,

product testing, recordkeeping, maintenance, and changes in productivity. We anticipate that 100 percent of these costs would be passed through to the construction equipment owner and user and ultimately to the consumer in the form of increased charges for construction. These potential cost increases represent less than 0.01 percent of the total construction receipts for 1978. We do not anticipate significant, if any, unemployment to result from this proposed action, nor do we expect significant differential effects on small contracting firms as compared to larger firms.

#### Sectors Affected

Manufacturers and users of construction equipment and the general public.

#### Related Regulations and Actions

*Internal:* EPA has issued the following noise emissions standards for the products listed:

- (1) Portable Air Compressors—published December 31, 1975; effective dates—January 1 and July 1, 1978;
- (2) Medium and Heavy Trucks—published March 31, 1976; effective dates—January 1, 1978 and 1982;
- (3) Truck-Mounted Solid Waste Compactors—published October 1, 1979; effective dates—October 1, 1980 and July 1, 1982.

EPA is currently developing noise emission standards for pavement breakers and rock drills, identified by the Administrator on January 19, 1977 as a major source of noise requiring regulation.

*External:* None.

#### Active Government Collaboration

National Bureau of Standards (noise testing); U.S. Army (noise testing); Federal Highway Administration (noise model); Bureau of Mines (equipment quieting).

#### Timetable

Final Rule—summer or fall of 1982.  
Regulatory Analysis—concurrent with the regulation.

#### Available Documents

NPRM—42 FR 35804, July 11, 1977.  
Draft Environmental Impact Statement.  
Economic Impact Statement.  
Background Document—EPA 550/9-77-250, dated June 1977.  
Available at office of Agency Contact (see below).

#### Agency Contact

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#### EPA—OANR

#### Particulate regulations for light-duty diesel vehicles

#### Legal Authority

The Clean Air Act Amendments of 1977, §§ 202, 206, 207, and 301, 42 U.S.C. §§ 7521, 7541, 7601.

#### Statement of Problem

The Congress has required the Environmental Protection Agency (EPA) to prescribe standards for emissions of particulates from light-duty diesel vehicles and light-duty diesel trucks by the 1981 model year. These standards are to be based upon the lowest emission rates that EPA finds to be possible through the application of technology that is available at the time the standards are to take effect, and are to take cost, noise, energy, and safety factors into consideration. The proposed standards are 0.60 grams per mile (0.373 gram per kilometer) for 1981 and 1982 and 0.20 gram per mile (0.124 gram per kilometer) for 1983 and later model years.

EPA believes that by the late 1980's, light-duty diesel vehicles will make up between 10 and 25 percent of the light-duty vehicle fleet. These vehicles emit significantly more particulate matter than do catalyst-equipped gasoline vehicles that operate on unleaded fuel. Depending upon the share of the market that is made up of diesels, this class of vehicles, if uncontrolled, could add an additional 160,000-400,000 tons of particulate matter to the atmosphere each year. The effect of these additional emissions would be particularly significant at the roadside. If controls are not applied, these additional emissions will cause many urban air quality control regions to exceed the primary National Ambient Air Quality Standard for Total Suspended Particulate which was set at a level to "protect the public health" and which is presently under review.

#### Alternatives Under Consideration

EPA is proposing to set standards of 0.60 grams per mile (0.373 grams per kilometer) for 1981 and 1982 and 0.20 grams per mile (0.124 grams per kilometer) for 1983 and later model-years. Additional alternatives EPA is considering are:

- (1) Apply additional controls to stationary sources.
- (2) Control mobile sources other than light-duty diesel vehicles (i.e., heavy-

duty diesel vehicles, locomotives, light-duty gasoline-powered vehicles, etc.)

(3) Adopt different levels of control for light-duty diesel vehicles (e.g., 0.3 grams per mile for 1983 and later models).

(4) Prescribe an average particulate standard that manufacturers would be required to meet with a sales-weighted average of their certification particulate levels, as opposed to the proposed individual vehicle standards.

In its analysis of alternatives, the Agency concluded that applying additional controls to stationary sources would put a disproportionate emphasis on control of stationary sources. The control of other mobile sources, specifically heavy-duty vehicles, is part of the Agency's overall strategy for controlling particulates; EPA is currently developing regulations for particulates from heavy-duty diesel vehicles. The Agency considered standards for other light-duty diesel vehicles reflecting both greater and lesser degrees of control, but concluded that the proposed standards most successfully fulfilled the criteria the Clean Air Act set out. Finally, certain manufacturers have suggested that the Agency adopt a mechanism whereby particulate emissions either from a manufacturer's total production or from its total diesel production would be averaged. The manufacturers argued that such a standard would allow greater marketing flexibility than would the individual vehicle standards.

#### Summary of Benefits

This rulemaking, if adopted as proposed, could reduce nationwide particulate emissions from light-duty diesels by 77 percent by 1990, reducing their particulate emissions from an uncontrolled level of 160,000-400,000 tons per year to 37,000-93,000 tons per year. This will also have a significant effect on roadside levels of particulate emissions from light-duty vehicles, reducing them from an uncontrolled range of 8.4-21.2 micrograms per cubic meter to 1.9-4.9 micrograms per cubic meter.

These emissions reductions will provide a benefit to human health because of the well-known effect of particulate matter on the human respiratory tract, including increased susceptibility to bronchitis, asthma, and pneumonia. There is also very preliminary evidence that diesel particulate matter may be mutagenic and/or carcinogenic.

#### Summary of Costs

Assuming light-duty diesel penetration of 10-25 percent of the light-duty vehicle market by 1983, the

aggregate cost of control should be between \$349 million and \$872 million (1978 dollars) for the 5-year period from 1981-85. Expressed as an increased sticker price to the consumer, for 1983 and beyond, EPA estimates a price increase of \$285 per vehicle.

#### Sectors Affected

This regulation will affect the industrial sector, in that the manufacturers of light-duty diesels will have to comply with the rulemaking. This rulemaking will also affect the general public. Nearly everyone will benefit from the lower levels of total suspended particulates in the ambient air, and those who purchase light-duty diesel vehicles will pay a higher sticker price for the vehicles.

#### Related Regulations and Actions

*Internal:* 40 CFR Part 86, "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures."

EPA is also developing proposed gaseous emission regulations for 1983 and later model-year light-duty trucks.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

Final Rule—4th quarter 1979.

#### Available Documents

NPRM-44 FR 6650, February 1, 1979.

All documents pertaining to this rulemaking, including the draft regulatory analysis, transcripts of the Public Hearing, comments on the proposal, etc., are found in Public Docket OMSAPC-78-3 at the Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street S.W., Washington, D.C. 20460.

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#### EPA-OANR

Proposed emission regulations for 1983 and later Model-year light-duty Trucks

#### Legal Authority

The Clean Air Act Amendments of 1977, §§ 202, 208, 207 and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601.

#### Statement of Problem

By 1995, light-duty trucks (LDTs) (vehicles in the 0-8500 pound category for gross vehicle weight) may contribute more than 20 percent of the hydrocarbon (HC) emissions, 29 percent of the carbon monoxide (CO) emissions, and 10 percent of the oxides of nitrogen (NO<sub>x</sub>) emissions in urban areas.

Of the 3215 counties or county equivalents in the nation, 19 percent are classified as non-attainment for photochemical oxidants (reaction of HC with sunlight) and 6 percent are classified as non-attainment for CO. Non-attainment status indicates that the given areas fail to meet the primary national ambient air quality standards (NAAQS) for the pollutant under consideration. The numbers are more significant in light of the fact that those non-attainment areas are large urban centers with high concentrations of the population. To reduce the number of people exposed to concentrations in excess of the NAAQS, further emission reductions are necessary.

#### Alternatives Under Consideration

EPA is considering two alternatives to reduce HC, CO, and NO<sub>x</sub> emissions.

(1) 1983 HC and CO standards for heavier light-duty trucks which are more stringent than the minimum stringency required for these vehicles under the Clean Air Act.

(2) A division of the light-duty truck class into subcategories with separate sets of standards established for each category.

EPA could propose these in any combination.

The Clean Air Act does not allow less stringent HC and CO standards for heavier LDTs unless the Administrator determines that the 90 percent-reduction standards are infeasible in the allowed interval. The Administrator cannot make this determination. Therefore, less stringent standards were not considered.

The first of the listed alternatives can not be considered in depth due to time constraints on the rulemaking. EPA is confident that its own and industry's technology assessments have resulted in reasonable Congressionally mandated reductions.

The second alternative would allow more stringent emission standards to be set for those light-duty trucks which are best able to comply with them. California has adopted this alternative under EPA waivers. While EPA may at some time also adopt this alternative, it has chosen not to do so at present. The single set of proposed standards for

light-duty trucks meets all statutory requirements.

#### Summary of Benefits

This action, if adopted as proposed, will reduce HC and CO emissions from light-duty trucks by 90 percent. This means that between 580 and 840 fewer pounds of HC and 4.9 to 6.1 fewer tons of CO will be emitted by vehicles that are subject to the proposed regulations than are emitted under the present standards. EPA believes that this proposed rulemaking will reduce total emissions from mobile sources by up to 17 percent for HC and up to 26 percent for CO. This corresponds to an urban air quality improvement of 3.4 percent for oxidants and 9 percent for CO.

#### Summary of Costs

EPA estimates that compliance with the proposed 1983 requirements will increase the average price of a light-duty truck by approximately \$82 over the price that would prevail if EPA made no changes in the existing regulations. There will also be an increase of about \$60 in maintenance and operating costs (discounted to year of sale) over the life of the average LDT. This projected increase results from the anticipated need for inspection programs which would be funded through inspection fees and the need for other maintenance that the inspection programs show to be necessary (e.g., replacing catalysts). The action we are proposing here will not itself cause these two or three increases in operating and maintenance costs. They will occur only if States and localities implement inspection and maintenance programs for 1983 and later model-year LDTs. For localities which are non-attainment areas, we will require inspection and maintenance (I/M) programs if the locality is in violation of the NAAQS in 1982. The Clean Air Act mandates this.

The estimated increase in the average price of a light-duty truck will contribute about 0.005 percentage points to the rate of increase in the 1983 Consumer Price Index, an indicator of general price levels of products that consumers purchase.

This increase cannot properly be called inflationary, since the public will receive air quality benefits in exchange for the higher prices of light-duty trucks.

The EPA estimates that the aggregate cost to the nation of complying for the five-year period 1983 through 1987 will be \$1.97 billion. This figure is the aggregate cost discounted to the beginning of the five-year period. Expressed as a required investment per vehicle for each vehicle made in the year the vehicle is manufactured, the

aggregate cost of compliance is about \$116 per truck. This includes both the retail price increase of the trucks and the increased cost of operation and maintenance.

#### Sectors Affected

The proposed rules on HC and CO would have a direct effect on the manufacturers of light-duty trucks and an indirect effect on the general populace in terms of improved air quality.

The population of those persons purchasing a new light-duty truck would also be affected indirectly by the additional \$116 cost applied to all new trucks.

#### Related Regulations and Actions

*Internal:* 40 CFR Part 86, "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures."

EPA is also developing proposed emissions regulations for particulates for diesel light-duty vehicles and light-duty trucks, and regulations for gaseous emissions for heavy-duty engines.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

Final Rule—second quarter, 1980.

#### Available Documents

NPRM—44 FR 40784, July 12, 1979.

All documents pertaining to this rulemaking, including the draft regulatory analysis, transcripts of the public hearing, comments on the proposal, etc., are in public docket OMSAPC-79-2, at the Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street, S.W., Washington, D.C. 20460.

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#### EPA-OANR

Regulations for the Prevention of Significant Deterioration (PSD) resulting from hydrocarbons, carbon monoxide, nitrogen oxides, ozone, and lead (PSD Set II).

#### Legal Authority

The Clean Air Act Amendments of 1977, § 166, 42 U.S.C. § 7476

#### Statement of Problem

The purpose of this program is to provide for adequate representation of the public interest where the nation's clean air resources are threatened by increases in the concentration of hydrocarbons, carbon monoxide, nitrogen oxides, ozone and lead. The present Prevention of Significant Deterioration (PSD) regulations administered by EPA require the use of "best available control technology" (BACT) on all new or modified major sources of these pollutants. These BACT emission requirements do not, however, limit area-wide emission levels or air quality impacts and therefore cannot protect against the degradation of air quality up to the National Ambient Air Quality Standards (NAAQS). The Environmental Protection Agency is addressing this problem in response to a specific requirement in the Clean Air Act Amendments of 1977 (§ 166, 42 U.S.C. § 7476).

#### Alternatives Under Consideration

EPA is now reviewing a range of regulatory alternatives which appear to be most reasonable at this time. Those alternatives include the following:

*Emission Controls Only*—This system would rely primarily on the requirements for best available control technology (BACT) on major new stationary sources and the Federal standards for motor vehicle emissions, with the possible addition of inspection and maintenance requirements. Control requirements under this system would not vary as a function of ambient concentrations or the proximity of sources as long as the National Ambient Air Quality Standards were not violated.

*Ambient Air Quality Increments*—This would call for developing an area classification system establishing numerical limits for allowable degradation of ambient air quality. This system would be similar to that already in effect for particulates and sulfur dioxide but not now applicable to other pollutants.

*Emission Density Zoning (EDZ)*—An EDZ system would set theoretical ambient air quality increments to be used only as a guideline for establishing limits on maximum allowable emissions per unit land area. Once EPA established these emission density limits, the appropriate State or local air pollution control agency would base preconstruction review and enforcement actions on compliance with the emission density limits rather than on ambient air quality.

**Inventory Management**—This system would require State and local agencies to develop and maintain detailed emission inventories, with the provision for mandatory periodic public review whenever the local emission inventory increased by a preestablished quantity or percentage. The system would require this public review before allowing any further incremental increase in emissions and could include an environmental analysis, a community environmental education program, a public hearing, and a vote by elected officials from the potentially affected areas.

**Statewide Emission Limitation (Bubble)**—This system would be designed to ensure that the aggregate Statewide emissions would not increase. Every local increase (after some fixed time) would require an equivalent decrease somewhere else within the State to offset it.

**Avoidance of Juxtaposed Major Sources of Hydrocarbons and Nitrogen Oxides**—This approach would be designed to prevent significant deterioration in air quality which results from the formation of ozone. Such a program would focus special attention on the hydrocarbon/nitrogen dioxide ratio and would prevent the location of major sources within a certain fixed distance of each other.

**Emissions Fees**—A fee system would be set up to strengthen the requirements for BACT on major new stationary sources. The State air pollution control agency would then levy a fee on each major new source. The fee would be based on the quantity of emissions and would thus give the source an incentive to develop and incorporate new and more effective strategies for controlling emissions.

**Marketable Permits**—A marketable permit system would establish permits to emit a certain fixed quantity of emissions and allow air pollution sources to buy and sell those permits. As in an emission fee system, the cost of these permits gives the source an incentive to minimize the quantity of emissions. Furthermore, the responsible air pollution control authority could limit the exact quantity of emissions within any one area by limiting the number of marketable permits allowed within that area.

#### Summary of Benefits

These regulations are at such an early stage of development that we cannot yet quantify benefits and costs. The benefits will vary depending on the alternative or alternatives we select. As we noted above, the regulations are unlikely to impose additional direct emission

control requirements on air pollution sources, but they may impose siting restrictions because of limitations on area-wide emission totals. The benefits of these regulations will be the preservation of clean air in areas of the country which currently have less pollution than the maximum allowable under the National Ambient Air Quality Standards. Once we complete the regulatory analysis, we will have a better estimate of the benefits and costs associated with this regulation.

#### Summary of Costs

As we noted above, we will assess the costs of implementing these regulations as a part of the regulatory analysis. We already require the affected sources under Section 165 to install the best available control technology (40 CFR 51.24). Therefore, the costs resulting from this regulation alone will be those related only to site location.

#### Sectors Affected

This regulation could affect a wide range of industries, including: transportation, electric power plants, refineries, smelters, petrochemical, and manufacturing industries. Since Congress intended these regulations to give special protection to certain national parks and wilderness areas (The Clean Air Act Amendments of 1977 § 164, 42 U.S.C. § 7476), they will affect areas in and around these parks in particular.

We do not anticipate that the regulation will affect small businesses disproportionately. The regulatory analysis will, however, specifically address this problem.

#### Related Regulations and Actions

**Internal:** EPA has developed and currently administers regulations for the prevention of significant deterioration of air quality resulting from emissions of particulate matter and sulfur dioxide (40 CFR 51.24). The same regulations also require best available control technology on the sources potentially affected by this regulation.

**External:** None.

#### Active Government Collaboration

Collaboration within the Federal government to date has included contacts with the Department of Transportation, Department of Energy, Department of Interior, Department of Commerce and the Department of Housing and Urban Development. We will also invite other agencies with related interests to participate. We will solicit the participation of State governments through the State and Territorial Air Pollution Program

Administrators, and we will solicit the participation of local governments through the Association of Local Air Pollution Control Officers.

#### Timetable

ANPRM—December 1979.  
Public Meeting—January 1980.  
NPRM—September 1980.  
Public Hearing—October 1980.  
Regulatory Analysis—October 1980.  
Final Rule—April 1981.

#### Available Documents

None.

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#### EPA-OANR

Review, and possible revision, of the national ambient air quality standards for carbon monoxide (CO)

#### Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409.

#### Statement of the Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs EPA to review the existing National Ambient Air Quality Standards by December 31, 1980. This is to include review of the scientific basis of the standard (the air quality criteria) as well as the standard. Where appropriate, EPA is to revise the air quality criteria and promulgate new standards. Therefore, EPA is undertaking a review of the current carbon monoxide (CO) standard, which may or may not result in new proposed rulemaking.

The magnitude of the problem associated with human exposure to carbon monoxide has not been completely quantified. However, there are several population groups that are sensitive to carbon monoxide exposure, i.e., patients with coronary heart disease (e.g., angina pectoris), peripheral vascular disease, cerebrovascular disease, or chronic obstructive pulmonary disease; pregnant mothers and their fetuses; and patients with anemia. Estimates of these population segments affected by CO exposure range from about 5 to 12 percent of the total U.S. population. In other words, several million persons in the U.S. with cardiovascular, pulmonary, and central nervous system disease can have these conditions aggravated by exposure to carbon monoxide.

### Alternatives Under Consideration

The existing ambient air quality standards for carbon monoxide are set at 9 parts per million (ppm) over an 8-hour period and 35 ppm averaged over a 1-hour period. The major alternatives to maintaining the existing standards are:

(1) to change the concentration levels of the standards, and

(2) to change the period over which the concentration is measured. The Environmental Protection Agency (EPA) may make the health-based (primary) standards more stringent, less stringent, or keep them at current levels. We are looking at various levels of possible standards to determine whether we need to make any change in the standard. EPA is also reviewing the need for a secondary standard to protect against environmental and other non-health damages.

### Summary of Benefits

There are several benefits that accrue from attaining the current ambient CO standard; they are related to the public health concerns we cited in "Statement of Problem." The benefits include improvement in general public health, the quality of life, and protection of the natural environment.

### Summary of Costs

We will complete a study of the costs and economic effects of controlling carbon monoxide for alternative standards at the time we propose a revised standard.

### Sectors Affected

Motor vehicles account for nearly 75 percent of the nationwide CO emissions and most high CO monitoring readings occur in urban areas with heavy traffic concentrations. Thus, control strategies for attaining the CO ambient air quality standard will have to focus on reducing emissions from motor vehicles. This proposed regulation will affect the automotive industry, the driving public, transportation planning and the operational highways.

### Related Regulations or Actions

*Internal:* Revision of the National Ambient Air Quality Standard for carbon monoxide may result in revised emissions standards for motor vehicles as well as the development and implementation of measures to control transportation, and planning programs for areas where the standard is not attained.

*External:* Modifications in the existing standards would require States to reassess their current State implementation control programs and

make revisions in control measures and strategies if necessary.

### Active Government Collaboration

Other Federal agencies which will be actively involved in reviewing the standard include the Departments of Transportation; Energy; and Health, Education, and Welfare. In addition, EPA has contacted the Interagency Regulatory Liaison Group (IRLG) and will involve them in developing the standard. The IRLG functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, and Occupational Safety and Health Administration.

### Timetable

NPRM—December 1979.

Regulatory Analysis—December 1979.

Public Hearing in Washington, D.C.—February 1980.

Final Rule—May 1980.

### Available Documents

ANPRM—"Review of the Carbon Monoxide Air Quality Standard," 43 FR 56250, December 1, 1978.

"Air Quality Criteria for Carbon Monoxide" (External Review Draft, April 1979), are available from the Environmental Criteria and Assessment Office, MD-52, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

U.S. Environmental Protection Agency Science Advisory Board Clean Air Scientific Advisory Committee, Subcommittee on Carbon Monoxide, "Transcript of Proceedings" for January 30 and 31, 1979 and June 14-16, 1979 are available for review in the Central Docket Section, U.S. EPA, Room 2903B, 401 M Street, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m. on weekdays.

"Control Techniques for Carbon Monoxide Emissions," EPA-450/3-79-006, June 1979, is available from U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711. (919) 541-2777.

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### EPA—OANR

Review, and possible revision, of the national ambient air quality standards for particulate matter (PM)

### Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409 *et seq.*

### Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs EPA to review the existing National Ambient Air Quality Standards by December 31, 1980. This is to include review of the scientific basis of the standard (the air quality criteria) as well as the standard itself. Where appropriate, EPA is to revise the air quality criteria and promulgate new standards.

As part of this review program, EPA is revising the air quality criteria for particulate matter and is considering possible changes to current standards. The current Primary Standard (set to protect public health) is 75 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) annual geometric mean and 260  $\mu\text{g}/\text{m}^3$  maximum 24-hour concentrations, not to be exceeded more than once per year. The current Secondary Standard (set to protect public welfare) is 150  $\mu\text{g}/\text{m}^3$  maximum 24 hour concentration, not to be exceeded more than once per year.

Exposure to airborne particulate matter aggravates asthma and other respiratory disorders, cardiovascular diseases, and can impair pulmonary function and increase coughing and chest discomfort. Ambient levels of PM may increase the adverse health effects of gaseous air pollutants, such as  $\text{SO}_2$ . Depending on their chemical composition, specific types of PM may have more serious toxic or carcinogenic effects than others. Elevated PM levels result in increased soiling of exposed materials and increased acidity of rain. Acid rain adversely affects crops, materials, and aquatic ecosystems.

### Alternatives Under Consideration

Based on the revised air quality criteria, EPA may decide to keep the existing standard without change, or may decide to change the allowable air concentration of particulate matter, the period over which the concentration is measured, or the number of allowable exceedances. EPA is also considering standards based on the size of the particulate as well as its concentration and the possibility of combining the ambient air quality standards for particulate matter and sulfur oxides. This consideration is based on evidence that smaller particles penetrate deeper into the lung, and evidence that elevated

concentrations of particulate matter occur in combination with elevated levels of sulfur oxides.

#### Summary of Benefits

Revision of the air quality criteria and review of the existing ambient standard will result in greater assurance that the standard that EPA will reaffirm or newly promulgate will protect the public health and welfare without unnecessary economic burden.

#### Summary of Costs

We will complete a study of the costs and economic effects of controlling particulate matter for alternative standards at the time we propose a revised standard.

#### Sectors Affected

Standards for particulate matter primarily affect the iron and steel industry, the utility industry, the non-ferrous metal industry, and industries which use large quantities of fossil fuels.

#### Related Regulations and Actions

*Internal:* Changes to the current ambient standard for particulate matter affect EPA's regulations for prevention of significant deterioration (PSD) or air quality, the ambient air quality standard for sulfur oxides (SO<sub>x</sub>), and EPA regulations for new source review.

*External:* Modifications in the existing standards would require states to reassess their current state implementation control programs and make revisions in control measures and strategies if necessary.

#### Active Government Collaboration

Other Federal agencies which will be actively involved in reviewing the standards for particulate matter are the Department of Energy; Department of Transportation; Department of the Interior; Department of Commerce; Department of Health, Education, and Welfare; Department of Agriculture; and the Tennessee Valley Authority. In addition, the Interagency Regulatory Liaison Group (IRLG) has been informed of this review. The IRLG functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission and Occupational Safety and Health Administration.

#### Timetable

NPRM—May 1980.

Regulatory Analysis—May 1980.

Public Hearing—July 1980.

Final Rule—December 1980.

#### Available Documents

"Air Quality Criteria for Particulate Matter," AP-49, January 1969, available from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

"Health Effects Considerations for Establishing a Standard for Inhalable Particles," July 1978, available from the Health Effects Research Laboratory, Environmental Protection Agency, Research Triangle Park, N.C. 27701.

Airborne Particulate, National Academy of Sciences, 1977 available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 192, October 2, 1979.

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#### EPA-OANR

Review of the national ambient air quality standards for sulfur dioxide

#### Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409.

#### Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs the Environmental Protection Agency (EPA) to review the existing National Ambient Air Quality Standards by December 31, 1980. EPA will review the scientific basis of the standard (the air quality criteria as well as the standard itself). Where appropriate, EPA is to revise the air quality criteria and promulgate new standards.

As a part of this review program, EPA is revising the air quality criteria for sulfur oxides, and is considering possible changes to the current standards for sulfur dioxide. The present primary standard (set to protect public health) is 80 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) annual arithmetic mean, and a maximum 24-hour concentration of 365  $\mu\text{g}/\text{m}^3$ , not to be exceeded more than once per year. The current secondary standard set to protect public welfare is 1300  $\mu\text{g}/\text{m}^3$ , maximum 3-hour concentration not to be exceeded more than once per year.

Sulfur oxides in the air, working alone or in combination with other pollutants,

aggravate respiratory disease such as asthma, chronic bronchitis and emphysema, and also irritate the eyes and respiratory tract. Sulfur oxides also contribute to the degradation of visibility and to the formation of acid rain. Acid rain adversely effects crops, materials, and aquatic ecosystems.

#### Alternatives Under Consideration

Based on the revised air quality criteria, EPA may decide to keep the existing standard without change, or may alter the air concentration of sulfur dioxide or the period over which the concentration is measured. EPA is also considering a combined standard for sulfur oxides and particulate matter, and a possible standard for sulfates.

#### Summary of Benefits

Revision of the air quality criteria and review of the existing ambient standard will result in greater assurance that the standard that EPA will reaffirm or newly promulgate will protect the public health and welfare without unnecessary economic burden.

#### Summary of Costs

A study of the costs and economic effect of controlling sulfur oxides for alternative standards will be completed at the time we issue the NPRM.

#### Sectors Affected

The ambient air quality standards for sulfur dioxide primarily affect the utility industry, the non-ferrous metal industry, the chemical industry, and industries which use large quantities of fossil fuels.

#### Related Regulations and Actions

*Internal:* Changes to the current ambient standard would affect EPA's regulations for prevention of significant deterioration (PSD) of air quality, the ambient air quality standard for particulate matter (PM) and EPA regulations for new source review.

*External:* Modifications in the existing standards would require states to reassess their current state implementation control programs and make revisions in control measures and strategies if necessary.

#### Active Government Collaboration

Other Federal agencies which will be actively involved in reviewing the sulfur oxide standards are the Department of Energy; Department of Transportation; Department of Interior; Department of Commerce; Department of Health, Education and Welfare; Department of Agriculture; and the Tennessee Valley Authority. In addition, the Interagency Regulatory Liaison Group (IRLG) has been informed of this review. The IRLG

functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, and Occupational Safety and Health Administration.

#### Timetable

NPRM—May 1980.  
Regulatory Analysis—May 1980.  
Public Hearing—July 1980.  
Final Rule—December 1980.

#### Available Documents

"Air Quality Criteria for Sulfur Oxides," AP-50, January 1969—available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

"Sulfur Oxides," National Academy of Sciences, 1978—available from the National Academy of Sciences, Printing and Publication Office, 2101 Constitution Avenue, Washington, D.C. 20418.

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 192, October 2, 1979.

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#### EPA—OANR

Review of the national ambient air quality standards for nitrogen dioxide

#### Legal Authority

The Clean Air Act Amendments of 1977, §§ 109(d)(1), 109(c), 42 U.S.C. § 7409.

#### Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs EPA to review the existing National Ambient Air Quality Standards by December 31, 1980. This is to include review of the scientific basis of the standard (the air quality criteria) as well as the standard itself. Where appropriate, EPA is to revise the air quality criteria and promulgate new standards.

As part of this review program, EPA is revising the air quality criteria for nitrogen dioxide (NO<sub>2</sub>) and is considering possible changes to the current standards for nitrogen dioxide. The present primary standard is 100 micrograms per cubic meter (µg/m<sup>3</sup>); annual arithmetic mean. A primary standard is the pollution concentration which, if not exceeded, will protect people from adverse health effects.

In addition, Section 109(c) of the Clean Air Act Amendments of 1977 requires EPA to promulgate a short-term standard (1 to 3 hours) for NO<sub>2</sub> if available evidence suggests that such a standard is needed to protect the public health and welfare.

Public exposure to NO<sub>2</sub> can result in impairment of pulmonary function and can increase susceptibility to respiratory infection. NO<sub>2</sub> or other nitrogen oxide compounds in the ambient air can affect crops, visibility, and materials, and can cause acid rainfall. Acid rain adversely affects crops, materials, and aquatic ecosystems.

#### Alternatives Under Consideration

Based on the revised air quality criteria, EPA may decide to keep the existing standard without change, or may alter the allowable air concentration of nitrogen dioxide, the period over which the concentration is measured, or the number of exceedances allowed. EPA is also considering a short-term standard.

#### Summary of Benefits

Revision of the air quality criteria and review of the existing ambient standard will result in greater assurance that the standard that EPA reaffirms or newly promulgates will protect the public health and welfare without unnecessary economic burden.

#### Summary of Costs

A study of the costs and economic effects of controlling oxides of nitrogen for alternative standards will be completed at the time we propose a revised standard.

#### Sectors Affected

If the review results in a new regulatory action, the regulation could affect point sources of nitrogen oxides emissions, such as power plants and industrial boilers. Mobile source emissions are currently being controlled under existing emissions limits for motor vehicles.

#### Related Regulations and Actions

*Internal:* Changes to the current ambient standard could affect EPA's regulations for nitrogen oxides emissions from motor vehicles, and for prevention of significant deterioration (PSD) of air quality, and EPA regulations for new source review.

*External:* Modifications in the existing standards would require states to reassess their current state implementation control programs and make revisions in control measures and strategies if necessary.

#### Active Government Collaboration

Other Federal agencies which will be actively involved in reviewing the nitrogen dioxide standards are the Department of Energy; Department of Transportation; and the Department of Health, Education, and Welfare.

#### Timetable

NPRM—March 1980.  
Regulatory Analysis—March 1980.  
Public Hearings—May 1980.  
Final Rule—September 1980.

#### Available Documents

"Air Quality Criteria for Nitrogen Dioxide" (external review draft, June 1979), available from the Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, MD-52, Research Triangle Park, North Carolina 27711.

U.S. Environmental Protection Agency, Science Advisory Board, Clean Air Scientific Advisory Committee, Committee meeting on Air Quality Criteria for Oxides of Nitrogen, "Transcript of Proceedings" conducted in Washington, D.C. on January 29 and 30, 1979, available from ECAO.

"Control Techniques for Nitrogen Dioxide Emissions" (draft, January 1978), available from Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711.

#### Agency Contact

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#### EPA—OANR

Standards of performance to control atmospheric emissions from industrial boilers

#### Legal Authority

The Clean Act Amendments of 1977, § 111, 42 U.S.C. § 7411.

#### Statement of Problem

Combustion of coal, oil, and gas in industrial boilers results in the emission of significant quantities of particulate matter, sulfur dioxide, and nitrogen oxides to the atmosphere. Because of the large number of boilers and the associated emission rates, industrial boilers are a significant contributor to the pollution problems in the United States. In 1975, emissions from industrial boilers were estimated to include 2.77 million tons of particulate matter (PM), 3.24 million tons of sulfur dioxide (SO<sub>2</sub>),

and 2.01 million tons of nitrogen oxides (NO<sub>x</sub>). The projected growth rate of the use of industrial boilers, coupled with the emphasis on shifting fuel from gas and oil to coal, will increase the potential for emissions. These air pollutants affect the health and welfare of most of our urban-dwelling citizens. Effects include respiratory disease in people and animals, reduced visibility in the atmosphere, damage to vegetation, and soiling and deterioration of real estate. Failure to provide more effective control of emissions from industrial boilers will allow increased exposure to the undesirable effects of excessive particulates, sulfur dioxide, and nitrogen oxides, and will expand the portions of the country that exceed EPA's ambient standards for these pollutants.

#### Alternatives Under Consideration

The 1977 Clean Air Act requires that EPA adopt standards of performance for stationary sources of air pollution that are fired by fossil fuels. EPA is gathering information on eight technologies for reducing boiler emissions: (1) oil cleaning and existing clean oil, (2) coal cleaning and existing clean coal, (3) synthetic fuels, (4) fluidized bed combustion, (5) particulate control, (6) flue gas desulfurization, (7) NO<sub>x</sub> combustion modification, and (8) NO<sub>x</sub> flue gas treatment. Alternatives pertain to the levels of emissions we will permit, the basis for regulating the emissions, and the possible exemption of specific sizes or classes of emission sources. For example, more restrictive limitations may be adopted for large sources, or for sources that use fuels with high pollution potential.

#### Summary of Benefits

Installing equipment that represents the best available control technology at new and modified industrial boiler facilities will help lessen air pollution in already affected areas and preserve clean air in yet unpolluted areas of the country. Such controls will reduce the need for using the "cleanest" fuels, which can be diverted to existing plants in which new add-on controls are less cost effective.

A regulation that requires more stringent controls on new and modified industrial boilers will allow industrial expansion and economic growth without an accompanying assault on ambient air quality.

#### Summary of Costs

Cost estimates for applying the control technology required by a regulation governing emissions from industrial boilers would be determined by the number, sizes, and types of

sources we regulated and the degree of control we required. EPA estimates annual added costs of control at more than \$100 million, but these estimates are necessarily very tentative.

#### Sectors Affected

Since boilers are fairly commonplace, the air pollution that they emit affects the population in most urban areas in a generally uniform manner. Additional rural effects result from the transport of pollutants by shifting air masses as weather changes take place. The type of plants involved are those for energy-intensive industries; glass (SIC 321, 322, 323), pulp and paper (SIC 261, 262, 263), and chemical manufacturing (SIC 281) are the specific industries that regulatory control would affect most. EPA will prepare an Urban Impact Statement.

The most direct effects of the proposed regulation will be on those industries that will install additional equipment to meet a standard. Such industries will be subjected to additional capital and operating costs. Because industry will increase product prices somewhat to comply with the standard, purchasers of those products will feel an indirect effect.

#### Related Regulations and Actions

*Internal:* We have issued water pollution regulations in the form of "Best Practical Technology Currently Available" and "Best Available Technology Economically Achievable." Industrial boilers are also subject to requirements of the Resource Conservation and Recovery Act.

*External:* Industrial boilers are subject to the Fuel Use Act and associated regulations established by the Department of Energy.

#### Active Government Collaboration

Because emissions from industrial boilers come from the combustion of fossil fuels, EPA is working closely with the Department of Energy to share information and stimulate advances in technology.

#### Timetable

Regulatory Analysis—July 1980.  
NPRM—October 1980.  
Public Hearing—November 1980.  
Final Rule—August 1981.

#### Available Documents

ANPRM—44 FR 37632, June 28, 1979.

#### Agency Contact

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#### EPA—OANR

#### Visibility plan requirements

#### Legal Authority

The Clean Air Act Amendments of 1977, § 169A, 42 U.S.C. § 7491.

#### Statement of Problem

Certain types of air pollution reduce visibility and in some areas of the country, there has been a documented deterioration of visibility because of inadequately controlled sources of air pollution. The deterioration of visibility is of special concern in and around parks and wilderness areas where scenic beauty is important. The Congress required the Environmental Protection Agency to develop regulations to prevent any future impairment and remedy any existing impairment of visibility in certain national parks and wilderness areas ("mandatory class I areas" as defined by § 169A of the Clean Air Act).

#### Alternatives Under Consideration

These regulations are still at a very early stage of development, and EPA is still formulating the regulatory alternatives. The regulations will state national requirements for visibility protection and call for State plans to implement these requirements. Among the policy issues we are discussing are: the definition for "baseline" visibility conditions, the protection to be provided to those scenic areas outside the boundary of the class I area, and the definition of "reasonable progress" towards the goal of visibility protection. EPA intends to adopt a phased approach to this problem. The first phase will involve controlling isolated major sources whose visible stack emissions impair visibility (so-called "plume blight"). The second phase will address the degradation of visibility on a regional scale, resulting from multiple sources, urban plumes, and problems in the Eastern U.S.

#### Summary of Benefits

These regulations and the State plans that are developed to implement them will reduce the impairment of scenic views from man-made pollution in class I areas where visibility is an important value. Since the regulations are at such an early stage of development, we cannot quantify the benefits. However, the millions who use parks and wilderness areas each year will benefit from the improved visibility.

**Summary of Costs**

It is expected that the economic effects of the first phase of these regulations will fall primarily on power plants fired by fossil fuels. The initial effects will likely be concentrated in the Western U.S. because of the location of the national parks and wilderness areas involved. The costs to the industries involved will be the capital and annual operating costs of control equipment. In the case of electric power plants, we expect the costs to be passed on, in the form of rate increases, to the customers of these facilities. We will quantify costs as we define regulatory alternatives.

**Sectors Affected**

As we noted above, the industrial sectors which the first phase of the regulations are most likely to affect are fossil-fuel power plants. Geographically, the regulations will primarily affect sources and consumers in the Western U.S.

**Related Regulations and Actions**

*Internal:* EPA's Prevention of Significant Deterioration regulations (40 CFR 51.24), which govern new source controls and location, affect many of the sources which visibility regulations will affect. Also, EPA's new source performance standard for utility boilers (40 CFR 60 Subpart D) places controls on power plants.

*External:* None.

**Active Government Collaboration**

Consultation within the Federal government to date has included the Departments of Interior, Agriculture and Energy. EPA will initiate collaboration with other levels of Federal, State, and local government.

**Timetable**

EPA's current schedule for the first phase shows:

ANPRM—December 1979.

Designate class I areas—December 1979.

Regulatory Analysis—May 1980.

NPRM—May 1980.

Public Hearing—June 1980.

Final Rule—November 1980.

**Available Documents**

None.

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**EPA—Office of Research and Development****Fuels and fuel additives registration****Legal Authority**

Clean Air Act Amendments of 1977, § 211(e) in support of § 211(b) (A and B), 42 U.S.C. §§ 7545 and 7601(a).

**Statement of Problem**

In 1977, Congress amended the Clean Air Act and added § 211(e) to the Act, which requires the Environmental Protection Agency (EPA) to develop regulations to test the environmental and health effects of fuels and fuel additives. Section 211(e)(2) establishes deadlines by which the manufacturer must provide the requisite information to the EPA Administrator. Section 211(e)(3) authorizes the Administrator to: (1) exempt small businesses from the regulations, (2) provide for sharing of testing costs among manufacturers who desire to register identical compounds, and (3) exempt businesses from duplicative testing requirements.

The present registration regulation requires that manufacturers submit certain information on the chemical composition and the toxicity of fuels and fuel additives to the extent this information is known to the manufacturer as the result of testing conducted for reasons other than fuel registration (40 CFR 79.31(c)).

The proposed action may require the manufacturer to perform certain physical, chemical, and biological testing of fuels and fuel additives before registration.

**Alternatives Under Consideration**

Our preferred alternative is to require testing on a tier basis. This approach would require that manufacturers report the chemical composition of all candidate fuels and fuel additives. If, based on chemical composition, we can make a finding that the environmental and health impacts are insignificant, we could decide that further testing is not required.

The second alternative is to require full testing for all fuels and fuel additives with no exemptions. Approximately 2,000 fuels and fuel additives would require full environmental and health testing. This alternative would be unnecessarily costly, since many fuels and fuel additives whose environmental impact we can predict to be small or negligible will have to be tested.

The third alternative would be to submit regulated pollutants (NO<sub>x</sub>, CO, hydrocarbons) to registration and performance testing, but not to health or

environmental testing. This is the present system as required by 40 CFR 79, which Congress mandated be changed.

**Summary of Benefits**

The benefit we expect from this regulation is the protection of public health. Fuels and fuel additives and the products of their combustion, which may be harmful to public health, will be eliminated from the market place.

We cannot estimate the economic benefits, in terms of reduction in respiratory and other diseases, at this time. However, because of the cost of medical services and because of the generally accepted view that prevention is preferable to treatment of diseases, the expected economic and social benefits, although they are not quantifiable at this time, will be significant.

**Summary of Costs**

There are over 2,000 fuels and fuel additives presently registered under § 211 of the Clean Air Act. We estimate that approximately 200 of these will require some degree of testing by the manufacturers. The cost to the industry of implementing these tests will be between \$90 and \$120 million. These costs will be distributed over the next three years, because by law all fuels and fuel additives must meet the testing requirements within three years of the date of promulgation of this regulation.

**Sectors Affected**

This proposed regulation would affect the petroleum industry, the automotive industry, and the driving public (to the extent that the petroleum industry would pass through to the consumers increased testing cost). The proposed regulations contain provisions to exempt small businesses from the most costly tests.

**Related Regulations and Actions**

*Internal:* Fuels and Fuel Additives Registration (40 CFR 79).

Proposed Guidelines for Registration of Pesticides (40 CFR 162, 163, 181).

Toxic Substances Control Act, § 4, Carcinogen Protocols and Chronic Toxicity Protocols (40 CFR 772).

Ambient Air Quality Standards (40 CFR 50).

*External:* None.

**Active Government Collaboration**

Health testing protocols will be submitted to the Interagency Regulatory Liaison Group for screening before the regulation is promulgated.

**Timetable**

NPRM—December 1979.  
 Final Rule—March 1980.  
 Regulatory Analysis—will accompany  
 NPRM.

**Available Documents**

"Testing for Health Effects on Fuels and Fuel Additives" by Gause, et al, Environmental Monitoring Systems Laboratory, Research Triangle Park, N.C. 27711.

Test Plan to "Study the Effect of MMT on Emission Control Performance" (Draft).

"Protocol to Characterize Gaseous Emissions as a Function of Fuel and Additive Composition", EPA-600/2-750048, September 1975.

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**EPA—Office of Water and Waste Management**

**Effluent guidelines and standards controlling the discharge of pollutants from steam electric power plants in navigable waterways**

**Legal Authority**

The Clean Water Act, P.L. 92-500, as amended, §§ 301, 304, 305, 306, 307, 311, 402, and 504, 86 Stat. 816.

**Statement of Problem**

The Environmental Protection Agency (EPA), under the statute cited above, is required to develop technology-based effluent limitations guidelines and standards for discharges into navigable waterways and review such regulations once every five years. We initially promulgated effluent limitations guidelines for the steam electric industry on October 8, 1974. The U.S. Court of Appeals for the Fourth Circuit remanded parts of the guidelines (*Appalachian Power v. Train*, 545 F. 2d 1351 (4th Cir. 1976)).

We are reviewing the 1974 regulations to reflect updated information and remedy deficiencies pointed out by the Fourth Circuit Court of Appeals. In addition to the pollutants examined in the previous regulations, we are expanding the review to include toxic substances cited in the June 8, 1976 Consent Decree, *Natural Resources Defense Council et al. v. Train*, 8 ERC 2120 (D.D.C. 1976). We expect to publish the NPRM in the Federal Register,

February 1980. We will not include guidelines for thermal discharges in these regulations.

The steam electric generating industry is composed of approximately 1,068 generating plants nationwide. Steam electric generating plants have extremely large discharge flows. For this reason, the quantity of pollutants that is discharged is substantial even though the concentration is relatively low. Pollutants detected in significant quantities in the wastewaters of steam electric plants during an EPA sampling program were total residual chlorine, copper, zinc, nickel, chromium, arsenic, and trihalomethanes.

**Alternatives Under Consideration**

The Agency is considering various wastewater treatment technologies for controlling pollutant discharges from steam electric plants to the Nation's waterways. The primary focus of this effort is to control the discharges of toxic substances. We have determined that cooling water and ash transport water from power plants are the major contributors of toxics. For cooling water, the Agency is concerned with the discharge of pollutants resulting from the use of chlorine and other chemical additives. Technologies for wastewater control include end-of-pipe treatment (such as dechlorination) and management practices (such as using alternative chemicals). For ash transport water (defined below), the Agency is concerned with the discharge of inorganic toxic substances. The control technologies that the Agency has evaluated include: (1) methods of ash transport without the use of water, (2) complete recirculation, (3) partial recirculation, and (4) end-of-pipe treatment.

In evaluating the options for regulation development we consider several important factors, including: the quantity and type of pollutants each wastewater source discharges, treatment technologies that are available for the control of these wastewaters, the air and solid wastes that the wastewater treatment systems may produce, and the cost of these systems.

The various technologies under consideration for streams, other than ash transport water, have minimal economic impact. However, ash transport control technologies may cause major economic impact for smaller size facilities. Whenever coal or oil is burned in a steam electric power plant's boiler, varying amounts of ash are formed that require periodic collection and disposal. Some of the ash is relatively fine in size and light in

weight, and is carried from the boiler in the flue gas and collected with air pollution control equipment. This type of ash is called "fly ash." Some ash is relatively bulky and heavy and will settle at the bottom of the boiler's furnace. This type of ash is called "bottom ash." These two types of ash can be transported wet or dry to their ultimate or temporary disposal sites. The advantages and disadvantages associated with the control options for ash transport water are given below because of their potentially significant economic impact.

**Fly Ash**

There are three technological options under consideration for developing effluent guidelines in steam electric plants. The first option requires zero discharge of water used for fly ash transport. The technology for achieving this option is to use transport methods that do not require the use of water (dry transport). The advantages of this option are that the technology is demonstrated and available and it will eliminate the discharge of toxic metals. The disadvantage is that the cost is high.

The second option requires recycling and reuse of the ash transport water. The advantage is that it will reduce toxic pollutants in both their suspended and, to a lesser degree, their dissolved form. However, data are not available yet to determine the degree of recirculation that is possible.

As a third option, the Agency is considering adding a further requirement to the second option that will reduce arsenic from fly ash transport water to 0.05 mg/l, through coagulation and lime precipitation. The advantage of this treatment is that it would be required only of those plants with high levels of arsenic. Since this technology is presently not used by steam electric plants for this wastewater stream, EPA would be required to use data from other industries to determine the effluent concentration that is achievable.

**Bottom Ash**

There are two technological options under consideration for bottom ash transport water, including a zero discharge option. The zero discharge option can be achieved through complete reuse/recycling of the ash sluice water or by the use of transport methods that do not require water. This option will remove completely all toxics in both their dissolved and suspended forms. The other technological option under consideration is partial recirculation of bottom ash transport water. This will remove suspended toxic

metals and a limited amount of dissolved metals, although technology for further removal of dissolved metals is available.

We are still gathering additional information on the costs and availability of the technologies. We have not selected the option for proposal, although the zero discharge requirements are the most environmentally acceptable.

#### Summary of Benefits

The major benefit of the proposed rule will be improvement of the aquatic environment through the reduction and/or elimination of discharges from steam electric generating facilities containing toxic compounds, primarily total residual chlorine and metals. The quantity of inorganic toxics that the zero discharge option for fly ash would remove is estimated to be 2,876 lb./day for existing plants and 1,192 lb./day for new plants. The zero discharge option for bottom ash sluice water would remove an estimated 1,131 lb./day of priority pollutants for existing plants and 477 lb./day for new plants.

#### Summary of Costs

We are currently refining the cost data for the various technology options. A rough estimate of the cost of compliance with the revised guidelines for the discharge of chemicals ranges from a \$240 million to a \$3.0 billion increase in cumulative utility capital costs through 1985. The high cost estimate is less than 2% of total utility capital costs through 1985. This would result in an increase in annual requirements for operating revenue of up to \$400 million in 1985. These cost increases will be spread over the utility system, resulting in a national average cost increase to consumers of less than 0.5%. None of these requirements is expected to cause plant closings; however, they could slightly shift the generation of power from older and smaller coal-fired plants to larger ones.

#### Sectors Affected

These guidelines would directly affect establishments engaged in the generation, transmission, and/or distribution of electric energy for sale. They would also indirectly affect users of electric power, through rate increases.

#### Related Regulations and Actions

*Internal:* The scrubber systems used to comply with air pollution regulations may result in the discharge of contaminated water. The proposed requirements of the New Source Performance Standards under § 111 of the Clean Air Act will increase the

number of facilities with scrubber systems in the future.

Section 316(b) of the Clean Water Act authorizes the Agency to require the best technology available in the location, design, construction, and capacity of intake structures for cooling water, to minimize adverse environmental impact.

Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the economic and environmental factors associated with various wastewater treatment technologies.

*External:* The recent emphasis on converting oil-fired power plants to other fuel types and the problems associated with nuclear waste disposal will affect the distribution of generating capacity by fuel types in the industry and, therefore, the amount of pollutants that would be discharged and controlled.

#### Active Government Collaboration

The Nuclear Regulatory Commission, the Department of Interior, and the Department of Energy have provided assistance by supplying the Agency with information and/or reviewing materials.

#### Timetable

NPRM—February 1980.

Final Rule—August 1980.

Regulatory Analysis—February 1980.

#### Available Documents

"The Final Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Steam Electric Power Generating Point Source Category", EPA (October 1974) [National Technical Information Service (NTIS) Number PB-240853/P5].

"Supplement for Pretreatment to the Development Document for the Steam Electric Power Generating Point Source Category", EPA (April 1977) [EPA-440/1-77/084]; and

"Technical Report for the Revised Effluent Limitations Guidelines for the Steam Electric Power Generating Point Source Category", EPA (September 1978).

Copies of the above reports can be obtained from NTIS or the EPA contact designated below.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Procedures governing applications for special relief under §§ 104, 106 and 109 of the Natural Gas Policy Act of 1978 (Docket No. RM79-67)

##### Legal Authority

The Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350. Department of Energy Organization Act, 42 U.S.C. § 7107 *et seq.* Executive Order No. 12009, 42 FR 46267, October 1, 1978. Natural Gas Act, as amended, 15 U.S.C. § 717 *et seq.*

##### Statement of Problem

In the past, the Federal Energy Regulatory Commission, or its predecessor the Federal Power Commission, set maximum lawful prices for sales of natural gas made by producers of that gas. These maximum or ceiling prices were set to cover an entire class of producers. The highest price a producer could charge for his gas, depending upon when a well was drilled and started production, was a particular nationwide or areawide rate. Sometimes, however, a producer found himself in the situation where the ceiling price was not high enough to permit him to make a fair profit producing and selling his natural gas. In such circumstances the producer could continue to operate the well and sell the gas at a loss or he could abandon the well. Either alternative was unsatisfactory. Operating a well at a loss obviously affected the producer and would likely discourage further business ventures; abandoning the well or otherwise removing its gas from the market resulted in harm to consumers. To alleviate this problem, the Commission adopted regulations, called "special relief procedures," whereby producers could apply for special ceiling prices above those set as area or nationwide rates.

In the fall of 1978 the Congress passed the Natural Gas Policy Act (NGPA). This Act sets ceiling prices for producers who sell natural gas and fundamentally removes from the Commission the responsibility for establishing ceiling rates. Prices under the Act are set for different types of natural gas production, depending upon when the well is drilled, where the gas is produced, and whether it was priced under the earlier practices of the Commission. However, as a part of its general regulatory scheme, the NGPA provides that the Commission may set a ceiling price higher than that stated in the Act for certain types of producer sales. In other words, the

Commission may continue to grant "special relief" under the NGPA.

The Commission believes that it is necessary to continue providing producers with the opportunity to obtain relief from the ceiling prices. To this end, the Commission has proposed new regulations for granting such relief. The new regulations describe the circumstances under which a producer-seller of natural gas may seek a special relief rate, the manner in which the seller may apply for the rate, the process by which the Commission will consider an application, and the cost standards which the Commission will use to determine a special relief rate.

#### Alternatives Under Consideration

In providing regulations to govern the application for, and granting of, special relief under the NGPA, the Commission must determine which of the various categories of natural gas that are priced under that Act will be eligible for the relief and on what basis it will grant the relief. There are alternatives for both of these questions.

The Commission has the authority to grant special relief for three of the eight categories of natural gas sales defined under the Act. The proposed rules cover only these three categories. However, the Act could be read to permit higher ceiling rates for the other five categories under circumstances which might be considered as warranting "special relief." The Commission is, therefore, considering expanding the rule to encompass some or all of the other categories.

One of the more complex problems in establishing a rule for special relief is the criteria by which the Commission will grant special relief. Under the old special relief rules, a producer could recover either out-of-pocket expenses or a rate sufficient to provide a fair return on total past and future costs, including any extra investment he had to make. The new regulations, while simplifying the standards, also distinguish between a producer who must undertake an important investment to make his well economically productive and one who requires no such investment. There are criteria for each, the major difference being the treatment of the producer's return on investment. The Commission could treat both situations in the same way by providing for a return on total investment.

The relative pros and cons of alternative standards are extremely complex. In deciding among them the Commission must balance the impact of each alternative against the practicalities of producer regulation, the supplies affected, the difficulty (or

simplicity) of the regulations, and the intent of the NGPA.

#### Summary of Benefits

This proceeding will directly benefit producer-sellers of natural gas. It will provide the sellers with an opportunity to petition for maximum lawful prices greater than those explicitly set forth under the NGPA. This is important for those sellers who might incur real economic harm or be hesitant to undertake new projects because the cost to produce their gas exceeds the ceiling price they could get for the gas under the Act. In addition, the proceeding will benefit the pipelines that purchase the gas and the ultimate consumers. The benefits will be in the form of added supplies of natural gas which would otherwise be kept off the market and which would have to be replaced with fuel oil or other expensive alternatives.

#### Summary of Costs

The procedures to allow special relief applications will place upon the Commission an administrative burden and, with that burden, an administrative cost. The number of petitions for special relief that may be filed cannot be determined at this time and will depend upon many variables, including general economic trends and the particulars of individual cases. About 50 to 60 cases per year were administered under the old special relief procedures. This would be a realistic estimate for cases filed under the proposed regulations. The new procedures of the proposed rule would result in a more economical use of the Commission's time. Thus, administrative costs should be less than under prior practices. However, about 130 requests for special relief are now pending. These cases, originally filed under the old procedures, form an immediate backlog for administrative action under the new procedures.

The granting of a special relief rate means that a producer can receive a higher price for the sale of his gas. This higher price can be passed through to the ultimate consumer. The exact magnitude of this effect is unknown but could well reach into the millions of dollars.

#### Sectors Affected

The procedure under consideration would directly affect two sectors of the natural gas industry, natural gas producers and the pipelines which purchase from producers. In addition, the procedure, by allowing for increased ceiling prices which can be passed through to the consumer, will affect ultimate consumers.

#### Related Regulations and Actions

*Internal:* Regulations implementing the Natural Gas Policy Act.

*External:* None.

#### Active Government Collaboration

In that the proceeding is one which will establish procedures for direct applications by producer-sellers of natural gas to the Commission, no other government entity is, or will be, involved.

#### Timetable

Commission consideration of Final

Rule—late fall 1979.

Final Rule—late 1979.

Final Rule effective—early 1980.

#### Available Documents

NPRM issued August 14, 1979 under Docket No. RM79-67.

Notice Granting Extension of Time to Comment, issued September 10, 1979 under Docket No. RM79-67.

Notice of Public Hearing, issued October 13, 1979 under Docket No. RM79-67.

Transcript of Public Hearing and written comments. All of these documents are available at the Commission's Office of Public Information, 825 North Capitol Street, N.E., Washington, D.C.

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#### FERC

Regulations concerning sales of electric power between qualifying cogeneration and small power production facilities and electric utilities, and exemption of such facilities from regulation, under §§ 201 and 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA)

#### Legal Authority

The Public Utility Regulatory Policies Act of 1978 (PURPA), P.L. 95-617, Title 2, 92 Stat. 3117.

#### Statement of Problem

Within 12 months after enactment of the Public Utilities Regulatory Policies

Act of 1978 (PURPA), the Federal Energy Regulatory Commission (FERC) must prescribe rules requiring electric utilities to purchase electric power from and sell electric power to cogeneration and small power production facilities.

Cogeneration facilities produce two forms of useful energy, such as electric power and steam, simultaneously, while small power production facilities use waste or renewable resources to produce power. Under § 201 of PURPA, cogeneration facilities and small power production facilities which meet certain standards and which are not owned by persons primarily engaged in the generation or sale of electric power, can apply to the FERC to obtain qualifying status. Under § 210 of PURPA, electric utilities must offer to purchase electric power produced by such qualifying facilities, and sell power to such facilities. In addition, the FERC can exempt qualifying facilities from regulation under the Federal Power Act, the Public Utility Holding Company Act, and State laws regarding rates and financial organization.

Cogeneration facilities can produce two or three times more usable energy than a conventional energy facility can produce from the same amount of fuel. When used in industrial processes, they can produce electric power in excess of the industry's overall requirements. They can supply electric power to the grid of the electric utility which serves the area, and can save the electric utility from burning additional fuel that it would require if the utility had to generate an equivalent amount of power.

Small power production facilities produce electrical energy from wind, solar, biomass, or waste. ("Biomass" means plant materials which are obtained from cultivation, or harvested from naturally occurring vegetation without significant depletion of the resource. "Waste" includes municipal, agricultural, and other wastes and includes any by-product materials of any operation for which the market value is less than the disposal cost.) Reliance on these sources of energy can similarly reduce the need to consume traditional fuels to obtain electric power.

Prior to the enactment of PURPA a cogenerator or small power producer wishing to sell electric energy to a utility faced two major obstacles. First, there was no legal requirement that a utility purchase the electric output, or that it pay a just and reasonable rate for such purchases. Second, a cogenerator or small power producer which provided electricity to a utility's grid ran the risk

of being considered a public utility and thus being subjected to State and Federal regulation. Sections 201 and 210 of PURPA are designed to remove these obstacles. Each electric utility is required under § 201(a) to offer to purchase all available electric energy from cogeneration and small power production facilities which obtain qualifying status under § 201 of PURPA. For such purchases electric utilities are required to pay rates which do not discriminate against cogenerators or small power producers. Section 210(e) of PURPA provides that the FERC can exempt qualifying facilities from State regulation regarding rates and financial organization and Federal regulation under the Federal Power Act and the Public Holding Company Act.

Implementation of the FERC rule is reserved to the State regulatory authorities and non-regulated electric utilities. Within 12 months after the FERC issues rules, each State regulatory authority and non-regulated electric utility must, after notice and opportunity for hearing, implement its rules.

The states must set specific rates for the sales of power between electric utilities and qualifying cogeneration and small power production facilities, pursuant to the principles established by the Commission. They can accomplish this by issuing regulations, on a case-by-case basis, or by any method reasonably designed to implement the FERC's rules, but they must do so only after notice and an opportunity for a hearing. The State regulatory authorities may also establish standards for safe interconnected operation between electric utilities and qualifying small power producers and cogenerators. In summary, the states will carry out the program, following general guidelines prescribed by the FERC.

#### Alternatives Under Consideration

The option that the Commission Staff task force presently favors would permit the State regulatory authorities a great deal of latitude with regard to the specifics of the rate provisions under § 210(a). Section 210(b) relates the rate to be paid for purchases of electric energy by electric utilities from qualifying facilities to the "incremental cost to the electric utility of alternative electric energy." The FERC's Staff interprets this standard to mean that the rate for such a purchase must be based on the costs that a purchasing electric utility can avoid by purchasing an equivalent amount of electric energy from a qualifying facility. The concept of decentralized and non-utility owned inputs into an electric system is a new one, and the determination of a utility's

avoided cost is a new and difficult rate problem. As a result, the FERC proposes to allow the State regulatory authorities room for experimentation within the broad guidelines of the Commission's rules.

With regard to the granting of exemption from regulation of cogenerators as electric utilities, comment the FERC received during public hearings and in response to a Staff discussion paper has indicated a general desire that exemptions be as broad as possible under § 210(e) of PURPA. Such broad exemption should remove much of the disincentive for cogeneration and small power production that was previously associated with the fear that these energy sources would be regulated as electric utilities.

With regard to the proposed rulemaking on obtaining qualifying status, a major issue is whether cogeneration facilities which use oil or natural gas should be eligible for qualifying status.

Under PURPA, the FERC may establish fuel use requirements for qualifying cogenerators of any size, but any such requirements regarding the use of natural gas or petroleum would only be effective at facilities below the thresholds established under the Powerplant and Industrial Fuel Use Act. At such lower levels, a fuel burning installation that does not seek classification as a qualifying cogenerating facility would not be subject to a FERC rule and could burn natural gas or oil. Hence, a restriction on the use of gas or oil for cogeneration, imposed by FERC, could discourage cogeneration at the lower heat input levels, while not significantly reducing the use of oil or natural gas.

An alternative to the proposed rule might be only to grant qualifying status if oil or gas used by a cogeneration unit would displace oil or gas that an electric utility would otherwise use to supply the power needs of the facility. At this time, useful cogeneration is limited to machinery which uses oil or gas. As a result, to so limit eligibility to cogeneration would not comply with the mandate under PURPA that FERC encourage cogeneration.

Another issue arising in the adoption of a Final Rule in Docket No. RM79-54 concerns the minimum size for qualifying facilities. The minimum size set forth in the proposed rulemaking was ten kilowatts. However, comment FERC received indicated that viable wind machines and other small systems can be economically feasible at sizes as small as one kilowatt. A residence or small business can use these machines,

and in the aggregate, could achieve significant energy savings.

#### Summary of Benefits

These rules should significantly encourage the development of alternative energy sources. In turn, such development should reduce the need of electric utilities to consume increasingly expensive traditional fuels. In the long run the aggregate capacity of cogeneration and small power production facilities should reduce the need for utilities to construct new electric plants, since such capacity will be provided instead by cogeneration and small power production facilities.

#### Summary of Costs

Cogeneration produces much greater efficiency than do traditional power systems. As a result, fewer resources are needed to produce an equivalent amount of energy. Accordingly, there are few direct costs associated with cogeneration.

Similarly, small power production uses renewable resources or waste to produce energy. The use of these renewable fuel sources is similarly without significant direct costs.

Section 210 of PURPA prohibits the utilities from charging higher rates so as to subsidize cogenerators and small power producers. These customers will not have to pay higher costs to encourage these technologies.

The chief costs resulting from these rules are the costs associated with the operation of decentralized electric power supply systems. Heretofore, large central power plants owned by utilities have produced virtually all the power used on a utility's system. Safety equipment, billing, and service provided by the utility have related entirely to equipment owned and operated by that utility. Under the rules proposed by the Commission, many industries, businesses, and private individuals will have the opportunity to generate electric power and feed it into the utility's electric system. This interconnected operation may result in the need for additional safety equipment, and for increased administrative costs. Under PURPA, these additional costs must be borne by the cogenerators and small power producers, so that the utility's customers are not required to pay higher rates than they would have paid if the utility provided all of the power.

#### Sectors Affected

These rules will affect each electric utility; they are not limited to those which sell electric energy for resale in interstate commerce and are thus subject to the Federal Power Act.

#### Related Regulations and Actions

*Internal:* On June 27, 1979, the FERC issued proposed regulations providing for qualification of small power production and cogeneration facilities under § 201 of PURPA, in Docket No. RM79-54. These rules establish criteria by which small power production and cogeneration facilities may be certified as qualifying facilities and thus made eligible for the rate and exemption provisions of § 210 of PURPA.

*External:* Each State regulatory authority must set specific rates for these sales of power. States may do so by issuing regulations or on a case-by-case basis, but in all events must provide notice and opportunity for a hearing. States may also establish operating standards for interfacilities.

#### Active Government Collaboration

None.

#### Timetable

Public Hearing—November 19 (Seattle), November 28 (New York), November 30 (Denver); December 4 (Washington, D.C.).  
Final Rule—January 1, 1980.

#### Available Documents

Staff Paper Discussing Commission Responsibilities to Establish Rules Regarding Rates and Exemptions for Qualifying Cogeneration and Small Power Production Facilities pursuant to § 210 of the Public Utility Regulatory Policies Act of 1978, Docket No. RM79-55, issued June 26, 1979;

Proposed Regulations Providing for Qualification of Small Power Production and Cogeneration Facilities under § 201 of the Public Utility Regulatory Policies Act of 1978, issued June 27, 1979, Docket No. RM79-54; NPRM, Regarding the Implementation of § 210 of the Public Utility Regulatory Policies Act of 1978, Docket No. RM79-55, issued October 18, 1979;

Request for Further Comments in Proposed Rulemaking Establishing Requirements and Procedures for a Determination of Qualifying Status for Small Power Production and Cogeneration Facilities, Docket No. RM79-54, issued October 19, 1979.

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#### FERC

Regulations governing applications for major unconstructed projects

#### Legal Authority

Federal Power Act, Part I, 16 U.S.C. §§ 792-823; Public Utility Regulatory Policies Act of 1978, § 405, 16 U.S.C. § 2705.

#### Statement of Problem

This rulemaking is the third phase of a program of licensing reform for all projects built for the generation of electric energy by means of water power that are within the jurisdiction of the Federal Energy Regulatory Commission (FERC). See "Related Regulations and Actions". The licensing of water power projects, whether they are being developed by private enterprise, states or municipalities, is subject to FERC regulation, if they are located on navigable waters or public lands of the United States, use surplus water from a Government dam, or were built after 1935 on non-navigable waters that affect the interests of interstate commerce. In licensing such projects, the FERC considers design features, financial and economic factors involved in constructing the project, and environmental consequences.

Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA) charges the FERC with establishing simple licensing procedures for water power projects that have a capacity to generate 15 megawatts (20,000 horsepower) or less of electricity at any one time. The Commission is extending the benefit of that mandate to all water power projects. In this rulemaking, the licensing reforms will deal with all "major" (those with a generating capacity of more than 1.5 megawatts or 2,000 horsepower) projects (1) for which there is no dam or impoundment at the time of the application, or (2) which would result in a significant increase in the normal surface elevation of an existing impoundment, or (3) which are otherwise determined, pursuant to the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) (see "Related Regulations and Actions"), to have a potentially significant environmental impact.

The objectives of the revised provisions for licensing these major "unconstructed" projects, as for all other projects, are to simplify and clarify licensing requirements and procedures, to ease the burden of compliance (by reducing and clarifying reporting requirements consistent with the FERC's statutory responsibilities), and thereby to make the development of new sources

of hydroelectric power generation more attractive and efficient. The current regulations governing major water power projects are scattered in various sections of the Commission's regulations. An applicant also faces the prospect of submitting information as requested in up to 23 different exhibits within each application. Frequently, the existing regulations do not explain with sufficient detail what information applicants must submit. The result can be duplication of effort or deficient applications. The revision of the regulations governing major unconstructed projects will consolidate and simplify the exhibits required of any applicant in a way which elicits only that information that is relevant to an informed decision on the application.

Projects of the magnitude covered by this rulemaking naturally result in more significant environmental disturbances than other water power projects. The FERC will therefore require of any applicant for a major unconstructed project an Environmental Report of considerably greater depth and detail than it will for smaller projects or projects at existing dams. The FERC is also revising its NEPA regulations that set forth the specifications of an Environmental Report for all projects, tailoring the requirements for such reports to the type of water power project for which the applicant seeks a license. The need for relatively greater detail about such projects will also extend to information relating to their structural and financial integrity.

#### Alternatives Under Consideration

Insofar as licensing reform is mandated by statute, there is no alternative. The choices facing the FERC involve the extent to which it will require an applicant to supply particular kinds of information.

#### Summary of Benefits

Better licensing procedures should result in more expeditious licensing of water power projects and the encouragement of such development. One consequence of the creation of more hydroelectric facilities may be more stability in the cost of electricity to consumers.

Improved regulations conserve the manpower and financial resources of the FERC and assist applicants in using their time and money to the best advantage. For example, if regulations are more understandable on their face and are reasonable in their demands on the applicant, there may be fewer deficient applications requiring upgrading, less time wasted in interpretation, and less litigation. With improved regulations, FERC will be

better able to fulfill its obligations under NEPA through identification and minimization of adverse environmental disturbances.

#### Summary of Costs

Many developers find adapting to unfamiliar new regulations difficult, regardless of the clarity of those regulations. Overall, there would be no new costs added to the licensing process.

#### Sectors Affected

Projects of the U.S. Army Corps of Engineers, the Bureau of Reclamation, and any other agency of the Federal government that is empowered to construct, own, or operate water power projects are not subject to FERC regulations. The rulemaking will affect State, municipal and private development of water resources for purposes of power generation.

#### Related Regulations and Actions

*Internal:* The first phase of the licensing reform program revised the licensing regulations for all "minor" (installed capacity of 1.5 megawatts or less) projects (FERC Order No. 11, 43 FR 40215, September 11, 1978). The second phase revises the regulations for "major" (more than 1.5 megawatts of installed capacity) projects where at least a dam and impoundment are in existence at the time of the application (Docket No. RM-79-36, 44 FR 24095, April 26, 1978). In conjunction with these reforms, the Commission is also revising its procedural regulations governing licenses and preliminary permits for all water power projects (Docket No. RM 79-23, 44 FR 12432, March 7, 1979).

The FERC has proposed new Regulations Implementing the National Environmental Policy Act of 1969 which relate to all its actions. (Docket No. RM 79-69, 44 FR 50052, August 20, 1979.)

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—early 1980.

#### Available Documents

None.

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## FERC

### Regulations to implement the second stage of incremental pricing under the Natural Gas Policy Act

#### Legal Authority

Natural Gas Policy Act, P.L. 95-621, Title II, 92 Stat. 3371.

#### Statement of Problem

The Natural Gas Policy Act of 1978 (NGPA) requires the Federal Energy Regulatory Commission (FERC) to promulgate rules to implement incremental pricing of natural gas for certain industrial facilities. FERC must have promulgated the first ("Phase I") rule by November 9, 1979. Under the Phase I rule, the higher prices for natural gas which the legislation permits will be selectively channeled to large industrial boiler fuel users whose natural gas supplies are delivered through interstate pipelines.

This will have the immediate benefit of initially shielding residential and other users of non-incrementally priced gas from some of the wellhead price increases that will occur under the legislation.

The NGPA further requires that the FERC promulgate an amendment to this rule within 18 months of the Act's enactment (by May 9, 1980). This "Phase II" incremental pricing rule may extend incremental pricing to other industrial uses such as chemical manufacturing or heat treating. FERC must submit this Phase II amendment to Congress for review. It will become effective if neither House disapproves it within 30 days.

The Commission has instructed the staff to prepare an NPRM to expand the application of incremental pricing to other industrial users. Title II of the NGPA gives the FERC authority to propose as broad or narrow a Phase II expansion of the Phase I incremental price rule as it determines is appropriate. However, any decision the Commission reaches on this question must be subject to Congressional review and may take effect only if not disapproved by either House. Commission action on the NPRM is expected in November 1979.

#### Alternatives Under Consideration

The staff will most likely propose a relatively broad Phase II expansion. Staff sees this approach as the best way to elicit public views on the proper course for the Commission to take in implementing incremental pricing. The Commission's final decision on how broad an expansion should occur in Phase II will derive from the views received in response to the proposed rule.

### Summary of Benefits

Incremental pricing is intended to lead to both short-term and longer-term benefits to consumers of natural gas. In the short run, recovering a larger share of the increased cost of natural gas from low priority industrial customers will permit higher priority customers, such as residential and small commercial users, to pay correspondingly less for their natural gas. Overall, incremental pricing is merely a transfer of costs, but the residential and small commercial users would benefit directly.

Over the longer term, the intended result of incremental pricing is to bring the price of gas to large industrial customers up to the price of competing or alternative fuels, which will normally be fuel oil. When this result is achieved, interstate pipelines will face a strong incentive to keep the bidding price for natural gas as low as possible for fear that higher prices will drive users of the incrementally priced gas from the system. This objective is of particular importance after January 1, 1985, when new gas is freed from price controls.

In the short term, there should be no macroeconomic benefit or cost attributable to incremental pricing. Industrial users will pay more than they would have otherwise, and residential and commercial users will pay less. The law requires that the increased costs to some users be of equal magnitude to the benefits to other users. Higher industrial prices due to incremental pricing may affect the competitive position of some firms, and may in this regard have discernable economic impact. Another potential consequence of higher industrial prices is increased conservation.

### Summary of Costs

Many commentors in the proceedings to implement the first stage of incremental pricing have argued that such rules may, over time, have negative economic consequences. If the price of natural gas to large industrial users is placed too high, these users will switch to alternative fuels. A massive shift of industrial customers away from natural gas would reduce the total volume of natural gas sales, and would force gas pipelines and distribution companies to raise the unit price of remaining sales in order to recover their fixed costs. Under this scenario, an improperly implemented set of incremental pricing rules would not only raise natural gas prices to high priority users (contrary to the intent of Title II), but would also give rise to additional imports of crude oil and petroleum products. The Commission recognizes these potentially

adverse economic consequences that could attend its implementation of these regulations. On the other hand, the Commission recognizes the Congress' intent in enacting incremental pricing, and will seek to promulgate rules that are both consistent with that intent and have maximum economic benefits.

### Sectors Affected

All gas consumers will be affected by the Commission's action on Phase II of incremental pricing. If the Commission significantly increases the number of industrial users subject to incremental pricing, there will be an adverse effect (in the form of higher delivered natural gas prices) for the users added under Phase II. But other users who are not made subject to incremental pricing would enjoy lower gas prices if additional gas costs were shifted onto Phase II industrial customers. The sectors that would benefit include residential, small commercial, and other high priority users such as schools, hospitals, and agriculture. Finally, the large boiler fuel users subject to Phase I may be benefitted by a broad Phase II expansion if the result is to substantially defer the point at which they reach the price that would make them switch to an alternative fuel.

### Related Regulations and Actions

*Internal:* Regulations implementing the first stage incremental pricing rules (Docket Nos. RM79-14, RM79-21, and RM79-48). In addition, cogeneration facilities as defined in RM79-54 are exempt from Phases I and II of incremental pricing.

*External:* None.

### Active Government Collaboration

The Office of Policy and Evaluation of the Department of Energy and the Council on Wage and Price Stability have each filed comments on proposals issued by the Commission in the above dockets.

### Timetable

Final Rule—no later than May 9, 1980.

### Available Documents

(1) NPRM—issued in November 1979; no citation available at the time of this publication.

(2) Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79-14, Commission Order No. 49, Final Rule, issued September 28, 1979.

(3) Regulations Implementing Alternative Fuel Price Ceilings on Incremental Pricing Under the Natural Gas Policy Act of 1978, Docket No. RM79-21, Commission Order No. 50,

Final Rule, issued September 28, 1979.

(4) Regulations Implementing Alternative Fuel Price Ceilings on Incremental Pricing Under the Natural Gas Policy Act of 1978, Docket No. RM79-21, Commission Order No. 51; Rule Exempting Industrial Boiler Fuel-Facilities from Incremental Pricing Above the Price of No. 6 Fuel Oil, Commission Order No. 51, issued September 28, 1979.

(5) Section 206(d) Exemption for New Small Boilers from the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79-48, NPRM and Public Hearing, issued September 28, 1979.

(6) Regulations Implementing the Second Stage Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79-56, Notice of Inquiry Into the Potential to Interface Incremental Pricing and Curtailment Policy, issued June 28, 1979.

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### FERC

Valuation of common carrier pipelines

### Legal Authority

Interstate Commerce Act; § 1, 49 U.S.C. § 1 *et seq.*; Administrative Procedure Act, §§ 553, 554; 5 U.S.C. §§ 553, 554; Department of Energy Organization Act, §§ 306, 402, 42 U.S.C. §§ 7155, 7172.

### Statement of Problem

Section 19a of the Interstate Commerce Act (Act) requires the Federal Energy Regulatory Commission (FERC) to ascertain and report the value of all property owned or used by all oil pipelines subject to the jurisdiction of the FERC. Valuation is a single sum computation of the "fair value" of the company's property. The "fair value" computation includes consideration of seven elements of value of the property: cost of reproduction new, cost of reproduction new less depreciation, original cost, present value of lands, present value of rights-of-way, working capital, and going concern value.

Valuation can be used for several purposes, but the principal purpose is to establish the legal rate of earnings of the regulated oil pipeline company. The Interstate Commerce Commission (ICC) had determined that a rate of return on valuation of 8 percent for crude

pipelines and 10 percent on valuation for petroleum product pipelines was reasonable and not excessive. Crude pipelines are those which transport crude petroleum from oil fields to central collecting points and then to refineries, while petroleum product pipelines transport refined products such as gasoline, kerosene, jet fuel and home heating oil from refineries to pipeline marketing terminals.

The ICC reconsidered this question of fair rate of return in "Petroleum Products, Williams Brothers Pipe Line Company," ICC Docket No. 35533, 1976, a complaint before the ICC in which certain shippers argued against the rates charged by Williams Brothers Pipeline Company as well as the methodology it used to construct the rates. The ICC refused at that time to consider challenges to the valuation methodology on the grounds that an overall review of methodology was inappropriate in an adjudicatory proceeding dealing with a specific carrier. The ICC then instituted this proceeding on August 28, 1974 (ICC Docket, Ex Parte No. 308) to investigate the ratemaking methodology. Specifically, the ICC wished to determine the need for any modifications in the way oil pipeline common carrier property is valued. The ICC expanded the rulemaking proceeding, however, on December 18, 1975, to include an examination of the proper rate of return for crude petroleum and petroleum product pipelines. The ICC named all oil pipelines subject to its jurisdiction as respondents in this proceeding.

This rulemaking was transferred to the FERC pursuant to the Department of Energy Organization Act in 1977. The FERC currently is considering whether the proceeding should be expanded to include an issue of oil pipeline ratemaking policy, specifically whether the valuation rate base should be abandoned in favor of an "original cost" rate base.

Ignoring this issue would mean that valuation would remain as the rate base, which some argue allows the pipelines an excessive rate of return on their investment.

#### Alternatives Under Consideration

The major issue in this rulemaking is what is the appropriate ratemaking methodology for oil pipelines. In particular, the FERC must decide whether to continue using the "fair value" methodology to determine rate base, or to change to another, such as "original cost." Rates for natural gas pipelines are currently set using the "original cost" methodology to determine rate base. A "net original cost

rate base" means the total actual construction cost recorded on the books pursuant to a Uniform System of Accounts, with certain adjustments.

The FERC has, as an alternative to deciding the ratemaking issue in a rulemaking proceeding, the option of deciding the proper methodology for individual pipelines in rate cases. Under provisions of § 15(7) of the Interstate Commerce Act, the FERC can suspend newly filed rates of pipeline companies and order a hearing to investigate the reasonableness of these rates. At such a hearing, the FERC can use a methodology it thinks would be appropriate for that individual company.

At present, a FERC Administrative Law Judge is holding hearings in "Williams Pipe Line Company," FERC Docket No. OR79-1, to investigate both the justness and reasonableness of the company's rates as well as the methodology that it used to develop these rates. When the FERC makes a decision in this case, it could set a precedent for future oil pipeline rate cases as far as what type of methodology should be employed.

#### Summary of Benefits

Many oil pipeline companies favor a valuation rate base because it includes reproduction costs, thereby protecting investors from inflation by including the inflation factor in the rate base rather than in the rate of return. They also argue that valuation methodology has been successful in fostering a sound economic environment for the pipeline industry for many years. Those who are proposing that the FERC apply to oil pipelines the same methodology that it uses for gas pipelines (original cost less depreciation) include the Department of Justice and petroleum shippers. They argue that valuation is an outmoded methodology which over-compensates investors for inflation. They state that "original cost" methodology is simpler and easier to determine.

#### Summary of Costs

While this rulemaking and other major rate cases are pending before the FERC, there is a possibility of delayed pipeline construction or expansion caused by uncertainty over possible substantial changes in ratemaking methodology. It is important, therefore, that this issue be resolved, whether in this rulemaking or in a lead rate case.

Independent oil pipeline companies argue that a change to an "original cost less accumulated depreciation" rate base will discourage them from acquiring existing lines from major companies because the cost of acquisition probably will exceed the

rate base, and the rate of return on "original cost" will not represent a satisfactory required return on their investment.

#### Sectors Affected

The outcome of this proceeding will have a direct effect on all oil pipeline companies within the jurisdiction of the FERC. It will affect financing, accounting, ratemaking, and other practices of all the companies. The decision will affect shippers of petroleum, since it will affect the entire structure of rates pipelines charge them. Since petroleum transportation costs normally comprise a very small percentage of the delivered price of petroleum products, this rulemaking should have a minimal effect on the price paid by the ultimate consumer.

#### Related Regulations and Actions

*Internal:* Williams Pipe Line Company, as we mentioned in the "Alternatives Under Consideration" section, is currently involved in an adjudicatory proceeding at the FERC. The U.S. Court of Appeals remanded this case to the FERC. The issues in this case are virtually identical to those in FERC Docket No. RM78-2.

The Trans-Alaska Pipeline System (TAPS) is also involved in a rate case before this Commission. Again, the issues are closely aligned with those in FERC Docket No. RM78-2.

*External:* None.

#### Active Government Collaboration

The Department of Justice is taking a very active role in this proceeding by filing briefs and participating in cross-examination and oral argument. The Department of Energy also is a party to this proceeding.

#### Timetable

Future dates in this proceeding are not firmly established and await guidance from the Commission.

#### Available Documents

All documents in this proceeding, including transcripts from oral argument held October 23rd and 24th, 1978, are filed under FERC Docket No. RM78-2 and can be obtained from the Office of Public Information, FERC. Documents that were in possession of the ICC were transferred to the FERC.

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## Chapter 2—Finance, Banking, and Insurance

NCUA	
Organizing a Federal Credit Union .....	68259
THLBB	
Monitoring Fair Lending Practices .....	68260
Proposed Amendments on Outside Borrowing .....	68261
Washington, D.C.-Md.-Va: SMSA Branching .....	68261

## NATIONAL CREDIT UNION ADMINISTRATION

### Organizing a Federal Credit Union

#### Legal Authority

Federal Credit Union Act, §§ 103, 104, 108, 109, 120, and 209, 12 U.S.C. §§ 1753, 1754, 1758, 1759, 1766 and 1789.

#### Statement of Problem

Credit unions are cooperative associations, chartered by either the Federal government or the States, for the purpose of promoting thrift among their members and making loans to their members. The members of credit unions chartered by the Federal government must have a common bond of occupation (such as employees in the same factory) or association (such as members of a local fraternal lodge), or must be within a well-defined neighborhood, community, or rural district.

The National Credit Administration (NCUA) is required by law to approve or disapprove all applications for Federal credit union charters. NCUA approves approximately 350 charter applications for Federal credit union charters each year. In addition, NCUA approves, each year, almost 1,500 amendments to the "field of membership" provisions of existing charters. The "field of membership" defines the group of people that a Federal credit union may, by law, serve. Regulations and guidelines concerning chartering and changes in field of membership provide the public and NCUA with guidance on fulfilling NCUA's statutory responsibility in this area.

NCUA's last revision to its chartering manual, "Organizing a Federal Credit Union" (which was incorporated by reference into NCUA's regulations (12 CFR § 701.2(d)), was in 1972. Since that time, numerous changes have occurred in the social and economic structure of the United States. Recent legislation has broadly expanded the powers available to Federal credit unions and has, as a result, increased their impact on the nation's economic and financial structure. In addition, NCUA has begun, in accordance with Executive Order No.

12044, to review its existing regulations to update, clarify and simplify them, and to eliminate redundant and unnecessary provisions. The combination of these factors is the reason that NCUA has decided at this time to review and update its existing regulation and manual on organizing Federal credit unions.

The consequences of not taking this action are numerous. First, it may lead NCUA to apply policies and principles that do not reflect the changes in the laws, the society, and the economy of this country. Second, it may lead NCUA to create "exceptions" to the previously established policies in order to reflect these changes. This will create less uniformity in the charter approval process. Third, creating changes through the publication of a proposed regulation and manual, rather than through exceptions or unpublished decisions, increases the public's awareness of, and ability to participate in formulating NCUA's chartering policies. Finally, the failure to review and revise chartering policies to reflect changes in the existing world could mean that credit union services would be available to fewer people who might legitimately qualify to be members.

#### Alternatives Under Consideration

Since the Federal Credit Union Act requires NCUA to pass upon all charter applications and provides specific guidance on the factors that it must consider, alternatives are limited. For example, § 104 of the Federal Credit Union Act (12 U.S.C. § 1754) requires NCUA to investigate and determine the economic advisability of establishing the proposed credit union before granting it a charter. Therefore, NCUA cannot consider the alternative of allowing market forces, such as competition, to determine whether a credit union is economically advisable.

One range of alternatives we are considering is the degree of public participation NCUA will allow in the chartering process. The proposed rule (44 FR 43737) would require that a group applying for a community credit union charter publish a notice in a newspaper of general circulation in the community it proposes to serve. The notice would invite the public to submit written comments to NCUA on the proposed charter. One alternative would be to continue NCUA's present policy (which does not require publication of this notice). The consequence of adopting this alternative would likely be less public participation in NCUA's chartering decisions than there might be if the proposed rule were adopted. Another alternative would be to extend

the publication requirement to all charter applications (such as those filed by associational or occupational groups) and field of membership amendments. However, adopting this alternative might not substantially increase public participation in chartering decisions, because the general public is not directly affected by these applications.

Another set of alternatives concerns the proposed changes to the chartering standards, as set forth in the 1972 manual. These alternatives focus on the definition of the "common bond" requirement for the field of membership. One alternative would be to permit a field of membership based on common belief or philosophy. At the other extreme, the common bond could require day-to-day interaction between members of the proposed field of membership. A middle course is to identify the characteristics of groups that have been recognized as having a common bond, and to use this as a guide for chartering decisions. We adopted this approach in the proposed rule, and set forth the characteristics of these groups in the proposed "Chartering and Organizing Manual for Federal Credit Unions."

#### Summary of Benefits

The primary direct benefit of revising the chartering regulation and manual is to make the services of Federal credit unions available to more people on a basis that reflects both the intent of the Federal Credit Union Act and the economic and social realities of our nation. The economic consequences may be an increase in savings and in the availability of credit to the public. The primary indirect benefit will be an increase in public awareness of, and participation in, NCUA's chartering program. These effects will result from both the creation and future revision of the proposed "Chartering and Organizing Manual for Federal Credit Unions" in accordance with regulatory requirements. Also, if the final regulation adopts the requirement for publishing notices of community charter applications, the public will have the opportunity to participate in the chartering process by submitting written comments.

#### Summary of Costs

We anticipate that the additional compliance costs we impose on the public (if we adopt the proposed rule) will be minimal. The only additional burden would be the requirement that a notice of a community charter application be published in one general circulation newspaper for three successive days in the geographic area

that the proposed credit union will serve.

#### Sectors Affected

The industrial sector that the proposed rule would most directly affect would be the financial institutions industry, to the extent that the proposed changes would provide credit union services to people who don't have access to such services at present.

The proposed changes may affect well defined neighborhoods, communities, or rural districts with populations greater than 25,000 people. The previous policy established the 25,000 population figure as an upper limit for the chartering of community credit unions. The proposed rule would eliminate this limitation, thus making credit union services more available to these geographic sectors.

Finally, the proposed manual will affect medical groups, combined government groups, feminist groups, and central credit union groups by recognizing these groups as having a common bond for chartering purposes. Thus, the proposed rule could result in providing credit union services to members of these groups.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

We have given the State government supervisors of State-chartered credit unions copies of the proposed rule and manual for their comments. These supervisors have a wealth of experience in chartering credit unions. Also, any changes to NCUA's chartering policy may affect decisions to apply for Federal, instead of State, charters. Therefore, the proposed changes may affect these supervisors and the dual (Federal/State) chartering system.

#### Timetable

Final Rule—December 1979.

Final Manual—December 1979.

Regulatory Analysis—not required, but task force report contains similar information.

#### Available Documents

NPRM—44 FR 43737, July 26, 1979.

Draft manual "Chartering and Organizing Manual for Federal Credit Unions."

Task force report, "Studies in Federal Credit Union Charter Policy."

These documents may be obtained by writing to:

National Credit Union Administration  
Office of Administration/Division of  
Office Services Publication  
Washington, D.C. 20456

#### Agency Contact

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Office of Examination and Insurance  
National Credit Union Administration  
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### FEDERAL HOME LOAN BANK BOARD

#### Monitoring fair lending practices

##### Legal Authority

(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. 1071)

##### Statement of Problem

The Federal Home Loan Bank Board ("Board") has statutory responsibility to enforce compliance by all Federal Home Loan Bank System member institutions with Federal laws which prohibit discrimination in lending. In order to monitor member institutions' compliance with statutes and regulations designed to prohibit discriminatory lending practices, the Board designed a loan application register ("register") to be kept by all member institutions. This register and the data analysis which followed were substituted for the monitoring system in Regulation B (12 CFR 202.2(z)) established by the Federal Reserve Board under the Equal Credit Opportunity Act (ECOA). This was done to provide more comprehensive monitoring in the least burdensome and most efficient manner, since the Board must regulate compliance with prohibitions contained not only in ECOA but also in other fair lending statutes.

The Board has now completed an extensive analysis of information obtained by Board examiners from every member institution in three Standard Metropolitan Statistical Areas (SMSAs), using an extensive data base as well as information derived from discussion with examination and supervisory personnel in the field who have been working with currently available material. The Board finds that the existing register's value for monitoring can be markedly improved.

#### Alternatives Under Consideration

The Board is considering alternatives for collecting data the registers produce and will consider formats for uniform data collection which best serve the needs of the institutions and the Board.

#### Summary of Benefits

The Board is proposing to restructure some items in the register and add others, such as information concerning loan applicants' income and debt obligations. Another proposed change is that information would be recorded after disposition of a written loan application, rather than while it is pending. The Board believes that such a step would substantially reduce handling time and expenses for associations and facilitate examiners' comparison of loans made during given time periods.

#### Summary of Costs

The central data collection point provided by the register eliminates costs of additional examination time required if Board examiners recorded the information needed for monitoring. Costs associated with a new register format should be offset by this more efficient system.

#### Sectors Affected

The proposed changes would affect all savings and loans which are Federal Home Loan Bank System members and all present and potential applicants for dwelling-related loans from them. The social costs of discrimination in lending are difficult to quantify, but the effects have compounded results when credit is unavailable.

#### Related Regulations and Actions

*Internal:* The proposal is part of the Board's existing nondiscrimination-in-lending regulations and guidelines in 12 CFR 528 and § 531.8.

On November 1, 1979, the Board adopted a resolution on credit rationing and warned of the need to assess whether any method used to ration credit is the least discriminatory under the circumstances. This notice appeared in the Federal Register during the second week of November.

*External:* None.

#### Active Government Collaboration

The Board regularly considers, along with other Federal financial regulatory agencies, uniform policies affecting fair lending.

#### Timetable

Public Comment—period closes  
December 18, 1979.

**Available Documents**

NPRM, 44 FR 60310, December 18, 1979.

Public comment letters, at address below.

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**FHLBB****Proposed amendments on outside borrowing****Legal Authority**

(Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425b, 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp. 1071)

**Statement of Problem**

Savings and loan institutions with accounts insured by the Federal Savings and Loan Insurance Corporation (FSLIC) are limited by regulations in the type and amount of their borrowing from sources other than Federal Home Loan Banks and State-chartered central reserve institutions. Changing economic conditions, which include trends of decreasing savings flows and increasing use of non-deposit funds (i.e., commercial paper, commercial bank borrowings, mortgage-backed securities), combined with present regulatory limitations, will unnecessarily restrict institutions' ability to attract funds. Therefore, a more liberal regulatory approach is needed to permit borrowing from outside sources.

As proposed, the changes would apply to all FSLIC-insured institutions, but in different ways. Federal associations' borrowings are regulated entirely by Federal Home Loan Bank Board regulations, but State-chartered insured institutions must comply with State and Federal regulations.

The proposal would make changes applicable to Federally and State-chartered institutions, as follows: (1) Total authorized borrowing would be increased to 50 percent of assets. Within that limit, total outside borrowing would be increased to 20 percent of assets. It should be noted that the asset base is greater than the savings base and basing borrowing limits on assets would liberalize the present regulations. (2)

Special requirements for mortgage-backed securities would generally be eliminated. (3) Not more than 20 percent of assets could be pledged as security for outside borrowing. (4) For any outside borrowing with a maturity over one year secured by mortgages, in case of default, FSLIC would have the right to acquire collateral sold. (5) For any outside borrowing with an original maturity in excess of one year, an association must file a notice of intent to issue a security consistent with FHLBB-specified content and form requirements. (6) All securities evidencing outside borrowings must bear notice that they are not insured savings accounts. (7) Minimum denominations for outside borrowings would be \$100,000 except—\$50,000 for subordinated debentures; no minimum for securities issued in private placement to institutional investors, and for borrowings from commercial banks; \$10,000 for securities (a) not offered through general advertising or (b) meeting prescribed disclosure requirements. (8) Federal associations would have borrowing authority equal to the authority of other insured institutions. (9) A provision would be included stating that, for purposes of maximum borrowing and collateralization limits, sales of mortgages with agreement to repurchase will be considered borrowings if only current loans must be repurchased and there is no provision for substitution of collateral. Otherwise such transactions would be considered a sale with recourse. (10) Borrowing would be included in the general limitation on bunching. (11) Subordinated debentures could be qualified as part of net worth by obtaining subsequent Board approval of the issue. Additional changes applicable to subordinated debentures would make disclosure requirements for those issues consistent with proposed requirements applicable to all types of borrowings.

By raising the outside borrowing limitation to 20 percent and basing all borrowing limitations on total assets rather than total savings, borrowing authority for insured institutions would be significantly increased. Basing borrowing limits on total assets also represents a liberalization, because insured institutions are experiencing a narrowing of their savings base, while their overall assets are increasing. The Board believes that liberalization is warranted, because even though few institutions are constrained by current outside borrowing limitations, the Board perceives a trend toward greater use of non-deposit funds. The Board foresees

that trend continuing and the need for additional borrowing authority increasing.

**Alternatives Under Consideration**

The Board will consider alternatives that are brought to its attention during the public comment period on the proposal.

**Summary of Benefits**

The proposal is aimed at expanding savings institutions' capacity to attract funds for mortgage lending and other purposes by increasing their flexibility in borrowing from outside sources. Delays in obtaining Board approval of certain types of borrowing would be eliminated, thus resulting in a more efficient marketing system for debt obligations of insured institutions.

**Summary of Costs**

The Board has no reason to believe that the proposal will increase costs.

**Sectors Affected**

The proposed changes would affect all FSLIC-insured institutions by liberalizing restrictions on the type and amount of their borrowing activity.

**Related Regulations and Actions**

None.

**Active Government Collaboration**

None.

**Timetable**

Public Comment—period closes  
December 31, 1979.

**Available Documents**

The NPRM published October 31, 1979, may be found at 44 FR 62519. Public comment letters are available for inspection at the address below.

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**FHLBB**

Washington, D.C.-Md.-Va. SMSA  
branching

**Legal Authority**

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. 1071.

**Statement of Problem**

The Federal Home Loan Bank Board ("Board") regulates geographic branching boundaries, those boundaries

within which Federally-chartered savings and loan associations may open branch offices.

Although Washington, D.C. is currently treated like a state for purposes of geographic branching boundaries (i.e., branching is permitted statewide, but not interstate), it differs from any state in comprising only a 61 square mile urban land area surrounded by other states, namely Maryland and Virginia. The Washington Standard Metropolitan Statistical Area (SMSA) is the only interstate SMSA in which no Federally-chartered savings and loan associations headquartered in the central city (or cities) of the state in which the central city is located have any suburban areas in which to branch. Conversely, no associations headquartered in suburban areas can branch into the central city.

A staff study done at the Board in 1976 at the request of the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs analyzed the statistics on branching in great detail. The study concluded that a greater degree of branching throughout an SMSA is likely to provide increased convenience of location for the typical saver. The study also indicated that branching throughout an SMSA did not appear to lead to greater concentration of associations' offices. It was noted in the study that, when account is taken of the fact that branching throughout an SMSA broadens the size of the savings market within which the various savings and loans can compete directly, there were grounds for believing that the results of metropolitan-wide branching in intrastate SMSAs had encouraged competition among financial institutions.

The proposed rule would permit Federal associations with offices within the Washington, D.C.-Md.-Va. SMSA to branch throughout the SMSA, with Board approval, rather than being restricted to branching only within the state (or D.C.) within which the home office is located.

#### Alternatives Under Consideration

The Board is awaiting results of the McFadden Study (an examination of present McFadden Act limitations on branching by banks) which may suggest maintaining the present system of branching for commercial banks or altering it in specific ways. The Study may also address issues that relate to savings and loan branching. Also, the Board may determine, on the basis of additional information, not to adopt the proposed change.

#### Summary of Benefits

The evidence on full-market branching that presently exists in the 246 SMSAs falling within one state's boundaries throughout the nation convincingly demonstrates that increased opportunities for branching will improve competition and that enhanced consumer services can be anticipated for the Washington SMSA without harming small competitive institutions.

In addition to improved services, individual consumers cited convenience as the most important reason to support Washington SMSA branching. Many commenters would prefer branches closer to home because they are elderly and have difficulty transacting business in person in D.C. Commenters also cited fuel conservation for customers as a probable result of suburban branching by D.C. associations.

#### Summary of Costs

Congress is currently studying the economic and social impact of the McFadden Act and may consider changes to it. Many commenters, including members of Congress, urged the Board to wait for the results of the McFadden Study before making a decision on this issue. The Board realizes the importance of the McFadden Study, and has kept open the comment period on the proposal until at least thirty days after the Study is submitted to Congress.

#### Sectors Affected

All lending institutions in the Washington SMSA and consumers doing business with them would be affected by the proposal in some way.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

The Board has received comments from a number of Federal, State, and local government offices and agencies, as well as from members of Congress. The Board will consider all viewpoints, including those presented in the McFadden Study, before it decides upon appropriate action on the proposal.

#### Timetable

The Board is holding open its public comment period on the proposal until after the release of the McFadden Study, which is expected to be presented to Congress in the very near future. A Federal Register announcement will set the cut-off date for comments, which will be at least 30 days after the Study is submitted to Congress.

#### Available Documents

ANPRM—44 FR 11090, February 21, 1979.

NPRM—44 FR 36057, June 20, 1979.  
Extension of comment period on  
NPRM—44 FR 58744, October 11, 1979.

Public comment letters available at address below.

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#### Chapter 3—Health and Safety

##### USDA-FNS

Regulation by the Secretary of Agriculture of foods sold on school premises in competition with the National School Lunch Program and the School Breakfast Program.....	60263
Voluntary Meat and Poultry Plant Quality Control Systems.....	60265

##### HEW-FDA

Chemical Compounds Used in Food-Producing Animals; Criteria and Procedures For Evaluating Assays for Carcinogenic Residues.....	60267
Food Labeling Initiatives.....	60269
Prescription Drug Products; Patient Labeling Requirements.....	60270

##### HEW-HCFA

Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities.....	60271
Life Safety Code in Hospitals, Skilled Nursing Facilities (SNF's) and Intermediate Care Facilities (ICF's).....	60272
Uniform Reporting Systems for Health Services Facilities and Organizations.....	60273

##### DOL-MSHA

Mandatory safety standards for surface coal mines and surface areas of underground coal mines.....	60274
Regulations setting forth requirements for safety and health training for mine construction workers..	60275
Requirements for construction and maintenance of impoundments and tailings piles at metal and nonmetal mines.....	60276
Safety and health standards for construction work at all surface mines and surface areas of underground mines.....	60277

##### DOL-OSHA

Chemical Warning Systems (chemical labeling).....	60278
Generic standard for occupational exposure to pesticides during manufacture and formulation.....	60279
Regulation for reducing safety and health hazards in abrasive blasting operations.....	60280
Safety and health regulations for construction activities in tunnels and shafts.....	60282
Safety standard for walking and working surfaces in general industry.....	60283
Standard for occupational exposures to hexavalent chromium.....	60284

##### DOT-FAA

Flammability standards for crewmember uniforms.....	60286
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##### DOT-FHWA

Hours of service of drivers.....	60287
Minimum cab space dimensions.....	60288

##### DOT-FRA

Alerting lights display—locomotives.....	60289
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##### DOT-USCG

Construction and equipment for existing self-propelled vessels carrying bulk liquefied gases.....	60289
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##### EPA-OANR

Environmental Standard for Inactive Uranium Mill Tailings.....	60290
Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances posing a Risk of Cancer.....	60292

<b>EPA-OPTS</b>	
Pesticide Registration Guidelines.....	68294
Rules and notices forms for premanufacture notification of new Chemical substances.....	68294
Rules restricting the commercial and industrial use of asbestos fibers.....	68295
Standards and Rules for Testing of Chemical Substances and Mixtures.....	68297
<b>EPA-OWWM</b>	
Control of Organic Chemicals in Drinking Water.....	68298
Hazardous Waste Regulations: Core Regulations to Control Hazardous Solid Waste from Generation to Final Disposal.....	68299
<b>CPSC</b>	
Consumer Products Containing Asbestos.....	68302
Omnidirectional Citizen Band Base Station Antenna Standard.....	68304
Upholstered furniture cigarette flammability standard.....	68305
<b>NRC</b>	
Decommissioning and Site Reclamation of Uranium and Thorium Mills.....	68307
Decommissioning of Nuclear Facilities.....	683
Disposal of High Level Radioactive Waste in Geologic Repositories.....	68309

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### Regulation by the Secretary of Agriculture of foods sold on school premises in competition with the National School Lunch Program and the School Breakfast Program

##### Legal Authority

National School Lunch Act of 1946, 42 U.S.C. § 1751-1768.

Child Nutrition Amendments of 1977, § 17, 42 U.S.C. § 1779.

##### Statement of Problem

The primary objective of the National School Lunch Program (NSLP) is to "maintain the health and well-being of the nation's children." The 1977 amendments to the Child Nutrition Act amended the National School Lunch Act to restore to the Secretary of Agriculture the authority to regulate the sale of competitive foods in schools participating in the National School Lunch Program and/or the School Breakfast Program.

A competitive food is defined as any food sold in competition with the federally subsidized meals in schools. Such foods may be available in alternate or a la carte lunch lines, or from vending machines or snack counters. Competitive foods presently sold in schools include items of varied nutritional value such as soups, sandwiches, fruit, candies, chips, and soda pop.

USDA formulated the competitive foods rule because of concern about the impact of foods sold in competition with the school feeding programs on the nutritional objectives of these programs. Specifically, the Department, along with others, is concerned about the impact of competitive foods on participation in the

school feeding programs, nutrition education, dietary practices, and the overall health and well-being of children.

Prior to 1977, the sale of competitive foods in schools had twice engaged the attention of Congress:

1. Regulations implementing a 1970 amendment allowed the competitive sale of only those foods which either fulfilled a Type A meal pattern requirement (described below) or were served along with the Type A lunch.

The Type A meal pattern, which is the basis for federal reimbursement, includes specified minimum quantities of food components: meat and meat alternates, vegetables and fruits, bread and bread alternates, and fluid milk. Local schools have considerable flexibility in making up the menus that meet this minimum federal requirement.

Because of wide local discretion in the choice of foods served, the result of this rule in many places was that only soft drinks and some candies, which were rarely served along with the school meals, were disallowed. While the impact of the 1970 rule was thus limited, it nonetheless aroused controversy, and some groups advocated the transfer to State and local education agencies of the Secretary's authority to regulate competitive foods.

2. A 1972 amendment restricted the Secretary's regulatory powers under the statute by providing that federal regulations could not prohibit the sale of competitive foods if the proceeds of such sale accrued to the schools or approved student organizations. This amendment placed authority for the regulation of competitive foods with State agencies and local school food authorities.

Nationwide, the regulation of the sale of competitive foods was unsystematic. Approved foods varied among localities, and many jurisdictions developed no competitive foods regulation at all.

In response to the 1977 amendment, on April 25, 1978, National School Lunch Program (43 FR 17476), the Department published a proposed rule which would have prohibited the sale of soda water, frozen desserts, candy, and chewing gum to children on school premises until after the last lunch period.

Subsequently, in view of the fundamental questions raised by commentators, both in favor of and opposed to the published proposal, the Department decided to provide additional opportunities for comprehensive public participation in the rulemaking process. The Department then published a notice of withdrawal of the proposed regulations, an announcement of three public meetings,

and supplementary information. At that time, the public was asked to address the competitive foods issue and to consider specific alternative regulatory approaches.

On July 5, 1979, the Department published a second proposed rule. In preparing it, the Department reviewed public comments it received and relevant analytic materials. It formulated the rule on the basis of findings on the health and nutritional status of children, current studies on the associations between diet and disease, food composition information, and methods used to evaluate foods according to nutritional criteria.

##### Alternatives Under Consideration

The Draft Impact Analysis supporting the second proposed rule identified elements of the rule and specified alternatives which were considered for each.

Elements of a competitive foods rule include: (a) the determination of which foods are to be prohibited for sale; (b) the time period for which they are restricted; (c) the location covered by the restriction; and (d) whether age distinctions among children ought to be made within the rule.

(a) Options USDA considered to determine which foods are to be prohibited for sale:

*Option 1.* Use of a food composition standard: Competitive foods would be assessed by the level of ingredients such as sugar, fat, or salt they contain.

*Option 2.* Use of a Type A meal standard: Foods credited and/or sold as meeting part of the Type A meal pattern would be approved.

*Option 3.* Use of a nutrient analysis standard: Foods would have to contain a minimum level of specified nutrients in order to be approved for sale.

The options were analyzed in terms of four general standards: (a) objectivity, (b) availability of data, (c) ability to assess individual foods, and (d) administrative feasibility. The repropoed regulations reflect Option 3, use of a nutrient analysis standard.

(b) Options USDA considered relative to the time period for which competitive foods are to be restricted:

*Option 1.* From the beginning of the school day until the end of the last lunch period.

*Option 2.* During the period in which school breakfasts and lunches are served, including a period of 30 minutes before and after such service.

*Option 3.* From the beginning until the end of the school day.

These options were considered in terms of their administrative feasibility and their support of the proposed rule.

The repropoed regulations reflect Option 1.

(c) Options USDA considered in determining where in the school the sale of competitive foods should take place:

*Option 1.* In the cafeteria and its environs.

*Option 2.* Throughout the school premises.

Using the same standards as in (b) above, administrative feasibility and support of the intent of the rule, USDA selected Option 2, and the repropoed rule reflects it.

(d) Options USDA considered in deciding whether there should be age exemptions in the rule:

*Option 1.* Require the rule in elementary and middle schools only.

*Option 2.* Require that the rule apply to all students (K-12).

USDA has selected Option 2 because Option 1 lacked the coverage necessary for effective rulemaking; the repropoed regulations reflect Option 2.

#### Summary of Benefits

The primary intent of this rule is to encourage children in school to reduce their consumption of foods of minimal nutritional value. It attempts to do this in two ways: by reducing the time during which children have ready access to such foods in schools and by influencing their attitudes about such foods in the belief that this may lead to changes in their eating behavior outside of school.

The reduction in consumption of such foods could result in a decrease in overall intake of foods which provide calories but few nutrients. Two alternative outcomes are possible with the reduction in consumption of these foods. Other foods which contain more nutrients could be consumed in place of the restricted foods (for example, milk instead of soft drinks), or those foods could be eliminated without substitution and overall intake of calories would be reduced. The first situation would help to ensure adequate intake of nutrients by children. Both alternatives might be helpful in preventing obesity and dental caries, which are among the principal nutritional problems facing the school-aged population. There are, of course, numerous other factors related to these nutritional problems, but the repropoed rule could in part help to reduce the prevalence of these nutritional disorders.

The educational aspect of the rule could affect the children's nutrition positively. Teaching children in school about the problems caused by the overconsumption of foods restricted by the rule would increase the likelihood that they would eat less of these foods.

#### Summary of Costs

Determining the economic impact of the proposed regulation is difficult, because there is little information that directly examines children's schooltime consumption of competitive foods. The information that is available indicates that only a limited number of students have access to competitive foods. Preliminary data from the 1977-78 evaluation of the USDA school breakfast program show that only 8 percent of elementary schools and 41 percent of secondary schools offer competitive foods through cafeterias, snack bars, or vending machines. The results are very similar to those of the 1975 evaluation of the special milk program, which revealed that 6 percent of elementary schools and 42 percent of secondary schools offer soft drinks for sale. If we assume that students are distributed relatively evenly throughout schools, then the results suggest that 22 percent of the nation's students have access to competitive foods.

#### Impact on Manufacturers

Because of the limited nature of the regulation, industries should not experience large changes in sales, though individual firms may be affected to a greater degree than the industry as a whole. The types of candies restricted by this proposal (hard candies, marshmallow candies, jellies, etc.) represent 23 percent of manufacturers' candy sales.

A 1975 survey conducted by the National Automatic Merchandising Association (NAMA) showed that 60 candy machines located in 37 schools sold an average of 3.44 items per person per month. The 1978 "Vending Times" census of the industry indicates that the average price for a selection from candy vending machines is 20¢. If every student with access to competitive foods purchased as much candy in school as students in the NAMA study, the retail value of the candy sold would be \$59 million. Assuming that 23 percent of such candies are affected by the new rule, then \$13.6 million of sales would be restricted. This is less than 0.5 percent of the value of candy sold in the U.S.

The candy industry may not experience a \$13.6 million sales drop because of the regulation, in view of the fact that other candies such as chocolates and nut bars may be substituted for the less nutritious items banned by the rule.

The Department has no information with which to estimate the quantity of gum that children buy in schools. USDA does not know what the effect of the regulation on the gum industry will be.

The NAMA survey indicates that schools with canned soft drink vending machines sold an average of 1.61 cans per person per month. Schools with cup soft drinks sold 3.28 servings per person per month. "Vending Times" identified the average price for such purchases as 29¢ and 17¢, respectively. If all students with access to soft drinks purchased cup drinks as frequently as students in the NAMA study, total retail sales in school would be \$48 million. The comparable figure for canned soft drinks is \$40 million. Figures are unavailable on what proportion of canned versus cup soft drinks children purchase. However, taking the larger of the two figures, the \$48 million, it would be less than 0.6 percent of manufacturers' \$8.4 billion soda and syrup sales. It would be an even smaller percentage of retail sales.

Only a small portion of the ice cream and frozen dessert industry sales are affected by the ban. Frozen ices, the only frozen dessert restricted, represent less than 3 percent of industry sales. The percent of such desserts that students purchase in schools would be a small part of the \$2.2 billion total sales of the ice cream and frozen dessert industry total sales.

#### Impact on Vendors

The NAMA study indicates that one-third of vending sales to students occurs in schools that do not participate in the NSLP, and these will not be affected by this proposed rule. Sales in the remaining schools constitute less than 3 percent of the vending industry's volume. A rough estimate derived from the NAMA study school sales data and from "Vending Times" current price information indicates that the foods restricted by the proposal constitute approximately 40 percent of vending sales in schools. Thus, the restriction affects only about 1 percent of total sales for the vending machine industry.

#### Sectors Affected

The groups this rule will affect include school children, school administrators, and manufacturers and vendors of foods defined as being of minimal nutritional value.

Approximately 41 million children attend schools participating in the school feeding programs. Since many States already have competitive foods rules that are more restrictive than this rule, the number of children this rule will affect is reduced.

There are about 92,000 schools participating in the school-feeding programs. The school administrators in each of these schools that presently do not have more restrictive competitive

foods policies will be affected by this rule.

Industries that the rule will affect include soft drink, frozen dessert, certain candies, and gum manufacturers. The rule will affect distributors of these foods, including those involved in direct sales to schools for resale, and the vending industries.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

None.

#### Timetable

Final Rule—January 1980.

An impact (regulatory) analysis will be prepared as part of the rulemaking process.

#### Available Documents

"National School Lunch Program," 43 FR 17476, April 25, 1978.

"National School Lunch Program Regulation of Competitive Foods: Withdrawal of Proposed Rule; National School Lunch Program Regulation of Competitive Foods: Notice of Meeting," 43 FR 58780-58788, December 15, 1978.

"National School Lunch Program and School Breakfast Program," 44 FR 40004-40014, July 6, 1979.

Draft Impact Analysis (on repropoed rule).

Summary of Public Comments (available at cost).

Carol Foreman editorial, *The Washington Post* (July 17, 1979).

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#### USDA-FSQS

##### Voluntary meat and poultry quality control systems

##### Legal Authority

Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.*

Poultry Products Inspection Act, 21 U.S.C. § 451 *et seq.*

##### Statement of Problem

The inspection requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act are administered by the inspection personnel of the Food Safety and Quality Service (FSQS), United States Department of Agriculture (USDA). The growth in number of meat and poultry

plants and the innovations within the industry have increased both the volume and the number of processed products being produced. Processed products are those which are created through manufacture, such as frankfurters and luncheon meat, as opposed to those which are created through merely slaughter and butchering, such as steaks and roasts. The increase in the supply of processed products has resulted in increased responsibilities for the FSQS inspection programs.

Federal meat and poultry inspectors currently inspect approximately 6,900 processing plants, as compared to 4,037 in 1970. The annual volume of processed products inspected increased 25 percent between 1970 and 1978. Federal processing inspectors inspected 74.1 billion pounds in 1978, as compared to 59.4 billion pounds in 1970. Most of this increase may be attributed to increases in production volumes and additional plant facilities, but Federal assumption of State inspection responsibilities has also been a factor. As of June 1, 1979, the Department has assumed responsibility for 25 State poultry and 17 State meat inspection programs in 25 States which were either unwilling or unable to effectively maintain their own programs. This number should continue to grow in the near future.

FSQS must continue to guarantee that products marketed continue to be wholesome, unadulterated, and properly labeled, in spite of this tremendous increase in the volume of product it must inspect. To insure this, FSQS currently employs 2,350 processing inspectors, as compared to 1,928 in 1970, and relies more heavily on laboratory testing. Combined with inflation, which has increased the salaries which have to be paid to inspectors, this has resulted in an increase in inspection costs from \$25 million in 1970 to \$69 million in 1979. Food processing inspection, as opposed to animal slaughter inspection, accounts for an ever-increasing share of total inspection costs. Thus, while total inspection costs increased 130 percent, processing inspection increased 176 percent.

Despite the increase of processed products, the basic techniques of inspection have remained essentially the same, as the underlying bases of the inspection laws have remained unchanged since the beginning of this century; therein lies the problem. The proposal could result in a solution in that it would bring about increased access by FSQS to a plant's records concerning its quality control process. This would lead to more complete and efficient inspection.

Quality control refers to controlling a process so that certain specifications are met. The result is a consistent and uniform product, involving a predictable cost, which meets Federal regulatory requirements. During the process of production, checks are conducted to determine if a change in the process is needed to assure the wholesomeness of the finished product. Problems are detected during, rather than after, the process. The data resulting from these checks would then be supplied to FSQS to aid in inspection. While not replacing the older system, this would add to it and improve the ability of FSQS to regulate processed products. Not all Federal requirements would have to be met by a plant volunteering to participate in a quality control program. Thus, the proposal provides for both total and partial inspection programs for quality control.

In exchange for this increased access to a plant's records, FSQS would grant plants operating under an approved quality control program the right to use special labeling. Such labeling would differentiate products inspected through such a program from those inspected only in the usual manner. The labeling would signify to the consumer that the product had gone through a more thorough, systematic inspection involving the use of increased technology. Therefore, the consumer would have an enhanced regard for such products.

In December 1977, the General Accounting Office (GAO) released a report on "A Better Way for the Department of Agriculture to Inspect Meat and Poultry Plants." This report recommended that a quality control program be implemented on a mandatory basis. This would require a change in the existing statutory law. At the present time, over 600 processing establishments voluntarily have instituted one or more partial quality control programs which have been approved by FSQS. Without such a program, the burdens arising from the growth in the meat and poultry processing industries will be increasingly difficult to manage. Effective use of voluntary systems of quality control, operated by the plants themselves, should serve to strengthen the inspection system while allowing FSQS to be more cost-effective in the use of its inspection budget.

##### Alternatives Under Consideration

In developing this proposal, FSQS evaluated, among other things, the two basic alternatives to the establishment of a voluntary quality control system: (1) the retention of the present inspection

system, which, while incorporating some use of quality control, does not provide for the total use of the process as an inspection system, and (2) the mandatory imposition of a requirement for a quality control program. The latter alternative would require that all processed meat and poultry products be inspected through a quality control program. The proposal would provide such a system as an alternative which a plant can follow if it chooses. It is the view of FSQS that mandatory quality control cannot be required under the existing law. Consequently, FSQS is currently considering the possibility of seeking legislative authority to impose mandatory quality control systems, while proceeding to propose systems on a voluntary basis.

Another potential benefit which could be realized through the proposal would be the generation of data from the voluntary system which would better enable both the Department and the Congress to properly evaluate the advisability of such a legislative change.

FSQS has recognized the need to consider the impact and effect of the proposal on the smaller operator. In the past, the Department has assisted many small establishments in implementing microbiological monitoring of their sanitation programs without employing a microbiologist, determining fat and moisture content of frankfurters and bologna without expensive laboratory equipment or chemists, and controlling the count of meatballs in a container by periodic samples and charting methods. FSQS will provide the same assistance to small operators in implementing other quality control systems and will approve all such systems which meet departmental criteria.

Thus, FSQS is seeking to adopt a more non-traditional approach to the inspection system. FSQS will not require participation in the program, but will encourage it by the availability of the special labeling. Such labeling will aid the consumer via an informational approach, increasing the knowledge with which a purchase is made.

#### Summary of Benefits

FSQS expects implementation of a voluntary quality control system to result in a gain in inspectors' efficiency. Currently, inspections are required even where voluntary quality control programs have been established. This results in a duplication of effort. Voluntary quality control will allow FSQS to concentrate inspection resources on chronic problem areas, and in the future will allow for the inspection of additional processing plants and increased product volumes

with little or no additional increase in inspection resources. Improved inspection efficiency could result in a total net savings to the Department over the next five years of between \$511,200 and \$1,462,000.

Industry will benefit, because plants which elect to use a quality control program will be able to exercise a more systematic control over their operations, increasing their ability to comply with standards. There will be savings for the following reasons: (1) the ability of each processor to assure a uniform amount of ingredients in each package will be enhanced; (2) because of this uniformity, manufacturers will be able to develop formulas for ingredient use, thus enabling them to purchase large quantities of ingredients at a minimum cost; (3) this uniformity will also reduce the amount of errors which require reprocessing, repackaging, and relabeling; (4) overhead costs will thus be lowered.

This reduction in costs can then be passed on to the consumer. Consumers will also benefit as the Department improves its ability to assure the distribution of wholesome, unadulterated, and properly labeled products. Products which do not conform to Federal requirements will be detected and removed or remedied early in the processing chain. The program should serve to increase product quality and uniformity and increase consumer confidence in the safety and quality of meat and poultry products as well.

#### Summary of Costs

If this proposal is implemented, FSQS will need approximately 13 full-time quality control specialists at a GS-13/3 level, in addition to those who are presently employed in the inspection force. The evaluation and approval of individual quality control plants will cost the Department about \$439,600. However, as noted earlier, FSQS expects an overall savings.

Industry will bear the primary costs of implementing and maintaining these systems. The proposal would affect those plants which voluntarily elect to participate. At the end of five years, an estimated 100 plants would have quality control programs that USDA has approved. The great majority of these plants already have acceptable quality control programs, and they would incur no additional costs. Some plants would choose to participate even though they would incur some additional expenses, mostly in start-up costs. FSQS estimates that 10 to 15 plants would fall into this category, and that their start-up costs would be approximately \$1,000 per plant. Total additional costs to industry

would then be in the range of about \$15,000 over a 5-year period.

#### Sectors Affected

This regulation would affect three sectors.

Consumers of meat and poultry products will benefit, as described above.

Within the industry, processing plants will enjoy reduced costs in the long run, as already described. The immediate cost impacts associated with this proposal will vary with the size of the plant. FSQS expects that no additional compliance and implementation costs would be incurred by those meat and poultry processing plants which produce 13 million to 1,197 million pounds of product per year, and the upper 50 percent of those plants which produce 3 million to 13 million pounds of product per year (medium-size plants). These are the plants which already have in-plant programs for quality control that should meet FSQS's minimum requirements for quality control. The impact would occur only on the lower 50 percent of the medium-sized plants. FSQS does not expect any plants producing 0.5 to 3 million pounds of product per year to participate voluntarily.

Government involvement in this program would be only at the Federal level.

#### Related Regulations and Actions

*Internal:* Informal approvals of pilot quality control programs and techniques (via industry permission for FSQS inspection of records and reports and samples). The proposal would formalize these approvals into a formal regulatory system.

*External:* Food and Drug Administration, 21 CFR, Parts:

103—Quality Standards for Food With No Identity.

109—Unavoidable Contaminants in Food for Human Consumption and Food Packaging Material.

110—Current Good Manufacturing, Processing, Packaging, or Holding Human Food.

113—Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

118-169—Requirements for Various Food Products.

197—Seafood Inspection Program.

The above contain requirements issued by FDA which are insured through industries' use of quality control. Since FDA does not provide for mandatory inspection of food programs, these are substitutes for inspection rather than components of a mandatory inspection system.

**Active Government Collaboration**

This is an action which has been and would be carried out solely by FSQS. FDA does not deal with meat and poultry inspection.

**Timetable**

Final Rule effective—first quarter 1980.

Final Impact Statement—available from Agency Contact listed below upon publication of final rule.

**Available Documents**

NPRM—44 FR 53526-53534, September 14, 1979.

Draft Impact Analysis—available from Agency Contact listed below.

Public comments received on or before November 13, 1979.

"A Better Way for the Department of Agriculture to Inspect Meat and Poultry Processing Plants." Single copies available free from: U.S. General Accounting Office, Distribution Section, 441 G Street, N.W., Washington, D.C. 20548. Multiple copies available at \$1.00 per copy from: U.S. General Accounting Office, Distribution Section, P.O. Box 1020, Washington, D.C. 20013.

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**DEPARTMENT OF HEALTH,  
EDUCATION, AND WELFARE****Food and Drug Administration**

Chemical compounds used in food-producing animals; criteria and procedures for evaluating assays for carcinogenic residues

**Legal Authority**

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 512(d)(1)(H) and 701(a).

**Statement of Problem**

Section 512(d)(1)(H) of the Federal Food, Drug, and Cosmetic Act requires the Secretary and, by delegation, the Commissioner of Food and Drugs, to refuse approval for veterinary uses of any drug if "such drug induces cancer when ingested by man or animal or, after tests which are appropriate for evaluation of the safety of such drug, induces cancer in man or animal, except [if] the Secretary finds that, under the conditions of use specified in the

proposed labeling and reasonably certain to be followed in practice (i) such drug will not adversely affect the animals for which it is intended, and (ii) no residue of such drugs be found (methods of examination prescribed or approved by the Secretary by regulation . . .) in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals."

The enactment, in 1962, of this diethylstilbestrol (DES) proviso to the Delaney (anti-cancer) clause of the Act has been a source of continuing controversy that has stemmed from the phrase "no residue will be found." This phrase can be interpreted either in an absolute or an operational sense. There are two important facts bearing on this controversy. First, the introduction of a compound, whether or not carcinogenic, into the system of a food-producing animal is likely to leave in its edible tissues minute residues that cannot be detected or measured by any known or likely to be developed method of analysis. Second, for any test developed to measure the concentration of a residue in an edible tissue, there is some level of residue in that tissue below which the test will show no interpretable result. In view of these facts, the Commissioner could not permit any use of carcinogenic drugs in animals if he adopted the absolute interpretation of the phrase "no residue will be found." The effect of that interpretation would be to deny the DES proviso any effect whatever. The second possible interpretation is to assume that the Congress intended to require the Commissioner to give an operational and more realistic definition to the phrase "no residue" and to proceed accordingly. As a matter of policy, to enact the DES proviso the Agency has adopted the second interpretation as a more likely reflection of Congressional intent, for two reasons. First, by its very nature the absolute interpretation constitutes a negation of the DES proviso to the Delaney Clause and leads to the conclusion that the Congress introduced this proviso intending it to have no effect. Second, the critical term in the proviso is that no residue will be "found," not that none will exist. Therefore, application of the Delaney Clause to animal drugs, and of the DES proviso to that clause, hinges on the availability of appropriate analytical methods that determine whether residues are present in edible tissues from animals that have been treated with carcinogenic drugs. Although FDA has adopted the second interpretation, it has never specified by regulation the

criteria and the procedures that apply in the process of approving methods for analyzing animal tissues for residues of carcinogenic drugs. The proposed regulation specifies such criteria and procedures.

**Alternatives Under Consideration**

The Agency examined three approaches for alternative ways to implement the language "no residue shall be found." The first approach, which the Agency has considered inappropriate from the start, defines the phrase "no residue" as the lowest limit of measurement or detection of the best analytical method capable of measuring the residues of a drug in edible tissues of treated animals that happens to be available at the time the drug was approved. The Agency has rejected this approach. Different chemicals have differing carcinogenic potencies. These differences are not in any way related to the availability, or lack thereof, of sensitive analytical methods that measure residues in edible tissues from treated food-producing animals. As a result this approach would inevitably lead to anomalies. For instance, in some cases FDA would permit public consumption of meat contaminated with very large levels of potentially carcinogenic residues, while in others it would require that meat be essentially free from residues of carcinogenic drugs of low potency.

The second approach, the one the Agency used up until a few years ago, defines the term "no residue" as the lowest limit of measurement practically attainable at the time of approval of the drug. Accordingly, from 1962 until about 1972, carcinogenic animal drugs were approved if meat from treated animals contained no residue above two parts per billion. This approach suffers from the same defect as the first approach, that of the differing levels of accuracy of measurement devices. Since about 1973 the Agency has been using a third approach, one that requires that the lowest limit of measurement of residues in meat be tailored to the carcinogenic potential of the animal drug for which a manufacturer is seeking approval. This means that the risk of human cancer inherent in different levels of residue contamination of meat derived from animals treated with a carcinogenic animal drug is estimated by statistical procedures from carcinogenesis bioassay data that is obtained in experimental animals. A very low level of risk of cancer (one in one million) is considered acceptable, and the petitioner for a drug is required to develop analytical methods that will measure a level of residue low enough

so that it presents a risk of cancer no larger than the acceptable level of risk. The regulation is an attempt to formalize and promulgate this approach to determining what methods of analysis of carcinogenic residue the Commission should approve.

#### Summary of Benefits

The proposal provides uniform and stable criteria and procedures for evaluating the carcinogenic risk of residues of chemical compounds in the tissues of food animals. It outlines a practical, workable approach to the goal of "no residues" that will eliminate uncertainties and expenses that have resulted from requirements to withdraw animal drugs from the market as methods of testing have become more sophisticated.

#### Summary of Costs

Any estimate of costs depends on the number of already approved animal drugs that will have to meet the criteria specified by the proposed regulation. The "Cyclic Review of Animal Drugs" recently begun by the agency will decide which among the approved drugs are carcinogens. We cannot now make an estimate of the number of affected drugs.

It is possible, however, to provide an upper limit to the cost of meeting the specified criteria per substance in each of the two general classes of synthetic or natural substances that are administered to food-producing animals. The first class comprises synthetic or natural origin substances which are not produced in the body of the food-producing animals. The cost for each "exogenous" substance to meet the criteria is an estimated \$3 million. The second class comprises substances normally produced in the body of food-producing animals (e.g., hormones). This "endogenous" category contains a number of substances that are either known or suspected carcinogens. We estimate the cost of compliance for one of these substances to be \$0.5 million.

#### Sectors Affected

The proposed regulation will mainly affect the animal drug industry. In addition to the added costs of the required testing and development of analytical methods, the Agency may require that drug producers withdraw certain animal drugs from the market. In addition, manufacturers of drugs with small sales may elect to withdraw those drugs from the market rather than comply with these requirements.

If some drugs are withdrawn from the market, either voluntarily or involuntarily, producers of animal drugs

and, indirectly, consumers may feel some impact from the regulation. Our regulatory analysis did not consider these impacts explicitly. However, in a regulatory analysis on the withdrawal of a specific drug we would consider such impacts.

#### Related Regulations and Actions

*Internal:* FDA conduct of its "Cyclic Review of Animal Drugs" to evaluate approved drugs for carcinogenic substances.

*External:* None.

#### Active Government Collaboration

We are keeping the Department of Agriculture (USDA) informed of our action. Analytical methodology that is required is under review by the USDA.

#### Timetable

Tentative Final Order—July 1980.

Regulatory Analysis—Final regulatory analysis with Final Rule.

#### Available Documents

NPRM—44 FR 17070, March 20, 1979.

An administrative record supporting the proposal and a transcript of public hearings is available in the office of FDA's Hearing Clerk.

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#### HEW-FDA

#### Food labeling initiatives

#### Legal Authority

Federal Food, Drug, and Cosmetic Act,  
21 U.S.C. § 343 *et seq.*

#### Statement of Problem

The Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and the Federal Trade Commission (FTC) believe that the existing food labeling laws and implementing regulations should be updated. The Federal laws governing the labeling of food are enforced by the USDA (meat and poultry) and FDA (all other foods). The FTC is interested in food labeling because it is responsible for regulating food advertising. Congress enacted the Federal food laws in 1906, and although some changes have been made since, the basic concepts of food labeling have remained unchanged for many years. For example, the last major

revision of the food labeling provisions of the Federal Food, Drug, and Cosmetic Act (FD&C) that FDA administered was in 1938.

Since these food laws were enacted, significant changes have occurred both in the food industry and in Americans' attitudes toward the food supply and their diet. Advances in the food industry have resulted in a wider variety of available foods and an increased availability of fresh foods. At the same time, the number of processed foods on the market now accounts for more than half of the American diet.

Federal agencies have attempted to meet these changes through labeling regulations. Since the different regulatory agencies are responsible for different aspects of food labeling, the resulting rules have been complex, duplicative, or inconsistent. FDA, USDA, and FTC realized a need to reassess the existing food labeling regulations before implementing any further revisions.

In 1978, the agencies conducted a series of public hearings soliciting views from the public on food labeling issues, and FDA sponsored a Consumer Food Labeling Survey to determine public opinion. These efforts were designed to provide the agencies with information that would help them develop legislative proposals or goals, devise new or revised regulations, and avoid initiating unwarranted actions. The announcement of hearings and requests for comments on a series of food labeling topics were published in the Federal Register of June 9, 1978 (43 FR 25296). The agencies sought the public's views on many issues, including: ingredient labeling; nutrition labeling and dietary information; open date labeling; food fortification; imitation and other substitute foods; safe and suitable ingredients; and the total food label (as an information source for consumers).

Over 9,000 people commented on these and other related food labeling issues. They especially wanted: labels describing all ingredients for all foods; nutrition labeling on more foods; open dating on more foods; labeling telling sugar content; and labels telling the amount of salt.

FDA, USDA, and FTC have analyzed these comments and are preparing tentative positions on 27 food labeling issues for publication in the Federal Register. These 27 issues range from ingredient labeling to nutrition labeling to the labeling of imitation and substitute foods. At this time, it is premature to discuss these as single actions, because they are closely related and are part of a total package. Any specific action that will change the

present legal requirements for food labeling would come only after we have considered comments on the individual issues.

None of these actions will go to the rulemaking stage until we have considered the additional comments.

#### Alternatives Under Consideration

New legislation and new or revised regulations will be needed to effect the changes in food labeling that are suggested in the tentative positions. In addition to these alternatives, the agencies could encourage industry to institute voluntarily some of the food labeling changes, or they could take no action.

To do nothing would run the risk of FDA being told by consumers that the Federal government does not listen to the public's wants and needs with respect to improved food labeling. In addition, the agencies themselves feel that more informative labeling is needed to assist consumers in making appropriate purchases based on health, nutrition, and personal preference.

Some of the tentative positions the agencies have adopted could be implemented by voluntary action of the food industry. In fact, the agencies will be encouraging industry to take steps itself to institute certain food labeling policies. For example, industry is encouraged to develop a means of sharing information for the purposes of nutrition labeling, which would save analytical costs that would otherwise be passed on to consumers in the form of higher prices. In addition, development of such bases could stimulate greater use of nutrition labeling, because sharing information would reduce the burden on individual food producers.

Although some of the food labeling initiatives can be realized through voluntary compliance, others will require agency action through regulations or Congressional action through legislation to ensure uniformity and consistency in food labeling.

#### Summary of Benefits

It is difficult to quantify the benefits that will accrue from improved food labeling. Qualitatively, the benefits can be viewed in the context of helping consumers make sound purchasing decisions and, most important, in terms of protecting public health. From this latter standpoint, consuming essential nutrients in sufficient quantities is vital to human health. This goal can be achieved only by eating a variety of foods. An improper selection of foods, however, can result in a person receiving inadequate or excessive amounts of nutrients, either of which

may be detrimental to health. Accurate and informative labeling concerning a product's ingredients and nutrient content is of even greater public health significance now than in the past, because advances in technology have created more processed and fabricated foods whose nutrient content and other characteristics are not readily discernable to consumers without adequate food labeling. As the relationship of nutrition to certain diseases is becoming better understood, food labeling becomes even more important to provide consumers with information for choosing products.

Many Americans must modify their diets for medical reasons. They need special diets because of disease or abnormal physiological conditions, such as allergies. These people especially need accurate food labeling information.

Of the factors that guide the agency in making food labeling changes, the consideration of public health is the most important. In those instances where food labeling is the most effective method for providing health protection (e.g., sodium labeling), the additional cost is considered acceptable to society.

#### Summary of Costs

Since none of these food labeling initiatives has proceeded to the proposal stage, FDA has not made an economic or regulatory assessment. Of the various initiatives under consideration the majority are at a stage where proceeding directly to proposals for implementing regulations would be premature, either because legislative changes will be needed to clarify the agencies' authority, or because further study is necessary to determine the best approach. For these initiatives, the agencies expect that the evidence of economic impact will accumulate during the course of the legislative and research process. A number of other initiatives, however, warrant immediate and detailed analysis of their economic impact as a step toward selecting specific proposals and courses of action. The agencies, therefore, are asking the public for data or analyses that may be helpful in clarifying and quantifying the economic impact of the current proposals on industry and consumers. We will request this information in the Federal Register notice. The agencies in particular are requesting economic data in areas of ingredient labeling and nutrition labeling.

In addition to this request for economic information, FDA will contract a study to determine the economic impact of the possible labeling changes. We expect the study to begin

in early 1980 and be completed by the end of that year.

#### Sectors Affected

The total food labeling initiatives have the potential for affecting almost everyone in our society, either directly or indirectly. Improved food labeling will be particularly effective for those people who need or desire certain information for health reasons, e.g., to avoid ingredients that may cause an allergy.

The food labeling initiatives will affect all segments of the food producing industry, regardless of size. The smaller segments of this industry will be most adversely affected because of the costs associated with revising labels. We can alleviate this effect somewhat by providing sufficient time for making the changes and by setting a reasonable uniform effective date. The agencies assume that the immediate cost impacts on food processing firms will be largely passed on to consumers through increases in produce prices. Ultimately, therefore, it is consumers to whom both the costs and benefits of the initiatives will accrue.

#### Related Regulations and Actions

*Internal:* None.

*External:* None.

#### Active Government Collaboration

The development of any subsequent revisions in food labeling will occur in cooperation with the Food Safety and Quality Service of the U.S. Department of Agriculture and the Federal Trade Commission. The agencies will initiate activities to implement food labeling revisions according to each agency's authorities and procedures, and will coordinate such action with other agencies to ensure consistency among them.

In addition, we are keeping the White House Office of Consumer Affairs advised of these activities.

#### Timetable

Publication of the Notice of Tentative Positions on Food Labeling (90 day comment period)—fall 1979.

Public hearing on the tentative positions—winter 1979.

Close of comment period on tentative positions—winter 1979.

Institute actions to implement food labeling revisions, i.e., publish proposals or seek or support legislation—spring 1980.

Regulatory Analysis—not required.

#### Available Documents

Notice of Hearing and request for comment on food labeling issues 43 FR 25296, June 9, 1978.

Transcripts of the public hearing and the written comments on the food labeling issues are available for review at the office of FDA's Hearing Clerk at the address below.

The background papers that discuss the food labeling issues in Positions and the Report of the Analysis of public comment on food labeling are available from the Office of Policy Coordination of the Food and Drug Administration at the address below.

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#### HEW—FDA

### Prescription drug products; patient labeling requirements

#### Legal Authority

The Federal Food, Drug, and Cosmetic Act, §§ 502, 503, 505, 506, 507, and 701; 21 U.S.C. §§ 352, 353, 355, 356, 357, and 371. The Public Health Service Act, § 351; 42 U.S.C. § 262. 21 CFR 5.1.

#### Statement of Problem

The Food and Drug Administration (FDA) has conducted original research and reviewed various studies to determine how much is being done to communicate information on prescription drug products to patients. The FDA research and review suggest that health professionals do not always adequately communicate information about prescription drug products to patients. In addition, patients may not pay attention to, understand, accept, or remember information that is presented orally. The agency believes that required patient labeling leaflets will help overcome the problems that hamper the oral communication of important information about prescription drug products to patients.

Another FDA literature review has shown that many patients misuse prescription drug products by failing to adhere to the prescribed regimen; for example, a patient may space doses improperly, fail to take the drug for the period of time necessary for adequate treatment, skip doses, or take extra doses. On the average, 30 to 50 percent of patients do not follow instructions for a wide range of prescription drug products. A patient's failure to know about or to comply properly with a prescribed course of therapy may be a major cause for the therapeutic failure of the product, or may cause the patient to experience a serious adverse reaction. Patient labeling of drugs, however, appears to improve the compliance rate.

FDA-sponsored as well as independent nationwide surveys also show that broad patient support exists for patient labeling. A 1978 nationwide survey showed that consumers wanted patient labeling by a 2 to 1 margin and that this desire was consistent across all age, sex, and educational subgroups.

#### Alternatives Under Consideration

FDA considered several alternatives to its proposed patient labeling requirements, including: (1) establishing requirements for patient labeling on a case-by-case basis instead of requiring a general program applicable to most prescription drug products, (2) requiring that patient labeling be distributed with a new prescription, but not with refills of that prescription, (3) requiring that copies of patient labeling be placed on display in each pharmacy, but not distributed, and (4) requiring that current labeling for doctors and other health care providers for prescription drug products be distributed to patients.

The alternative of establishing requirements for patient labeling on a case-by-case basis is unacceptable, because too much time elapses between when the need is identified and when the requirement is put into effect. Further, studies of patient compliance suggest the need for patient labeling for most, if not all, prescription drug products. Although requirements established on a case-by-case basis might permit greater public review of the need for patient labeling for each drug product, this alternative would not fulfill the immediate need for a broad and workable distribution system.

The other alternatives are unacceptable because they limit consumer access to important drug information. If patient labeling were required only for new prescriptions, chronic users of some products would be denied timely information about the products. Providing patient labeling as a reference source in pharmacies would serve only the interested consumer and would provide only information that must be remembered, unless photocopying facilities were available. Also, the patient is often not the person who obtains the drug product at the pharmacy. Finally, labeling written for health care professionals may be too technical to be understood by most patients.

#### Summary of Benefits

Patient labeling would provide patients with information about prescription drug products (information that 64 percent of consumers surveyed favor receiving). We believe patient labeling would increase compliance

with prescribed short-term drug therapy, help patients avoid harmful drug-drug and food-drug interactions, avoid serious side effects and adverse reactions, and could help patients manage serious side effects or prevent them from worsening.

FDA has identified the following benefits that could accrue because of patient labeling: (1) reduced prescription drug use, (2) fewer revisits to health care professionals, (3) fewer hospital admissions for avoidable adverse drug reactions or therapeutic failures due to noncompliance, and (4) fewer work-days lost due to adverse drug reactions that are avoidable.

In 1978, consumers spent \$9 billion on prescription drug products, of which an estimated \$1.9 billion was for drugs for short-term therapy. Patient labeling could affect prescription sales by improving compliance with the original therapeutic regimen, thus preventing the need for a refill or a second prescription due to the therapeutic failure of the first. It could also reduce the need for treating avoidable drug interactions with another drug.

Consumers could avoid revisiting health care professionals, at an average cost of \$15 per followup visit, if success rates for the initial drug therapy improve because patients comply better with the prescribed regimen. Return visits may also be reduced if drug interactions are avoided and side effects are better understood as a result of patient labeling. Also, patients could distinguish better between potentially serious adverse drug reactions needing medical attention and adverse reactions that would disappear once the patient has adjusted to taking the drug.

Some adverse effects of prescription drug use require hospitalization of the patient. Hospital treatment of adverse drug reactions annually costs between \$156 million and \$520 million. Patient labeling, in helping to avoid some of these costs, will yield a substantial benefit.

Finally, improper use of prescription drug products can have effects that do not require hospitalization but may force a patient to curtail normal activities. Thus, patient labeling may produce large potential savings, for example, in the form of fewer work-days lost because of avoidable adverse drug reactions.

#### Summary of Costs

FDA intends to implement the patient labeling requirements gradually over a period of several years. FDA assumes that the requirements will be applied to 25 products (representing 20 percent of all prescriptions issued to consumers) in the first year and to approximately 375

products (representing 90 percent of all prescriptions issued to consumers) by the fifth year. FDA estimates that in the fifth year of implementation the total cost of the program will be \$90.04 million. The cost would affect FDA, the pharmaceutical industry, pharmacies, other health care providers, and consumers. FDA estimates that its total cost for program management will be \$180,000 annually.

We estimate the annual cost to the pharmaceutical industry for writing and printing patient labeling texts to range from \$2.84 million in the first year to \$12.78 million in the fifth year. We estimate annual costs to industry for writing patient labeling texts to range from \$45,000 in the first year (when FDA would provide guidelines for patient labeling texts) to \$180,000 in the fifth year. We estimate costs to industry of printing patient labeling to range from \$2.8 million in the first year to \$12.6 million in the fifth year. We do not expect shipping and distribution costs for many drug products to change appreciably.

We estimate costs to retail pharmacies because of patient labeling storage (equipment, space, and pharmacy modification) and clerical activities (filing and dispensing) to range from \$20 million in the first year of implementation to \$75 million in the fifth year. FDA expects that the following estimates of capitalized costs to retail pharmacies from patient labeling will remain constant over the first five years of implementation: \$2.58 million for equipment, \$870,000 for storage space, \$1.38 million in pharmacy modifications to provide storage space, and \$0 to \$1.19 million in foregone profits.

We estimate clerical cost to retail pharmacies to range from \$15.56 million in the first year to \$70 million in the fifth year of implementation.

Hospital pharmacies will not have to give individual patient labeling information pieces to patients, but they will have to have information available to patients for reference. The cost to hospitals is expected to be approximately \$2.25 million per year.

FDA expects that almost all of the costs of the proposed requirements will be passed on to the consumer, but almost all of the expected gains will accrue to consumers as well. Assuming a straight pass-through to consumers of FDA costs (taxes), pharmaceutical and retail pharmacy costs (prescription drug prices), and hospital pharmacy costs (hospital costs), the estimated total costs to the consumer in the fifth year of implementation are \$90.04 million. Thus, the average prescription price would increase by about 1 percent, from \$6.44

to \$6.50, assuming that all industry costs are passed on and that they are equally distributed over all 1.4 billion prescriptions that are dispensed at the retail level.

#### Sectors Affected

The patient labeling requirements would apply to most prescription drug products. Accordingly, they would affect manufacturers and distributors who are responsible for the labeling of prescription drug products, dispensers of prescription drug products (for example pharmacists), and patients who receive the labeling when their prescriptions are filled. The effects of the regulations on manufacturers, distributors, and dispensers of prescription drug products are primarily economic and are discussed above under the heading "Summary of Costs." As we suggest there, the greatest effects of the regulations would be on pharmacies that would be required to store and dispense patient labeling with each prescription. As we discussed above in the section "Summary of Benefits," patients who use prescription drug products will be affected by the regulation to the extent that the required distribution of patient labeling helps them to use prescription drug products properly. The proper use of the products is expected to reduce significantly therapeutic failures and both the incidence and severity of avoidable adverse effects from prescription drug products.

#### Related Regulations and Actions

*Internal:* 21 CFR 201.305 (Patient labeling requirements for isoproterenol inhalation drug products.), 21 CFR 310.501 (patient labeling requirements for oral contraceptives), 21 CFR 310.515 (patient labeling requirements for estrogenic drug products), 21 CFR 310.502 and 801.527 (patient labeling requirements for intrauterine devices for contraception), and 21 CFR 310.516 (patient labeling requirements for progestational drug products).

*External:* None.

#### Timetable

Final Rule—summer 1980.

Final Rule effective—for a drug product 120 days after a guideline patient labeling text is established for the product.

Regulatory Analysis—final regulatory analysis available with the Final Rule.

#### Available Documents

NPRM—44 FR 40016, July 6, 1979.

We requested comments by October 4, 1979. Public hearings on the proposal were held on September 10, 12, and 14,

1979. We prepared a draft regulatory analysis under Executive Order 12044 when we published the proposal and placed it on file in the FDA Hearing Clerk's office. The draft regulatory analysis and transcripts of the public hearings are available from the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

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#### HEW-Health Care Financing Administration

#### Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities

#### Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) and Title XIX (Grants to the States for Medical Assistance Program) of the Social Security Act, 42 U.S.C. §§ 1302, 1395F, 1395K, 1395I, 1395x, 1395z, 1395bb, 1395cc, and 1395hh.

#### Statement of Problem

Nursing homes must meet a number of requirements in order to provide long-term care services under the Medicare and Medicaid programs, which fund services to many elderly and low-income citizens. These requirements are set out in the Social Security Act and in the HEW regulations called "Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities." (Skilled nursing facilities—SNF's—provide long-term care for patients who require skilled nursing on a daily inpatient basis, while intermediate care facilities—ICF's—serve patients who do not require regular skilled nursing but do need some health care on a long-term inpatient basis.)

The Social Security Act and the HEW regulations set standards for the health and safety of Medicare and Medicaid patients in SNF's and ICF's and are designed to assure that they receive quality care. State governments survey SNF's and ICF's annually, under contract with HEW, to determine if they meet the requirements of the law and regulations. Based on information the State governments collect in the surveys, the HEW regional offices

certify institutions for participation in the Medicaid and Medicare programs.

Approximately 18,000 long-term care facilities participate in Medicare and Medicaid. Medicare payments for long-term care were about \$400 million for FY 1978, and Medicaid payments for long-term care totalled over \$6 billion for FY 1977.

The present regulations have been in effect since 1974. The major reasons for revising the regulations are:

- (1) To improve the quality of patient care by developing requirements which better measure the actual quality of the care which patients receive in SNF's and ICF's,
- (2) to control the cost of long-term care, while not sacrificing the quality of care,
- (3) to update the regulation to reflect new methods of delivering health care services,
- (4) to strengthen requirements for the protection of patients' rights in nursing homes,
- (5) to make the regulations clearer and simpler, as a part of HEW's commitment to revise all old regulations to make them more readable and helpful, and
- (6) to eliminate areas of ambiguity in the current regulations which have resulted in discrepancies in enforcement.

#### Alternatives Under Consideration

The Department held a series of public hearings during the summer of 1978, at which a wide range of alternatives were discussed. Major issues were:

- What minimum qualifications should be established for professional personnel in SNF's and ICF's?
- Should unlicensed personnel be allowed to administer medications?
- How often should physicians be required to visit SNF patients?
- Should physician extenders (nurse practitioners and physician assistants) be permitted?
- Should facilities be required to provide or arrange for respiratory therapy?
- Should the requirement for annual surveys of SNF's and ICF's by State agencies be changed?

#### Summary of Benefits

We expect the revised regulations to improve the quality of patient care and increase patients' rights in nursing homes. Both nursing home personnel and patients will find the new regulations simpler to use, since they will be clearer, and diverse requirements from the old regulations will be consolidated where possible. Finally, HEW is considering changes

which would reduce some types of nursing home costs by eliminating some existing procedural requirements which have not been shown to be directly related to the quality of patient care.

#### Summary of Costs

HEW is studying the costs of these revisions to the regulations and will fully describe the cost impact in the NPRM. We now believe that several of the revisions to the regulations that are now under review would result in savings for nursing homes which could result in lower costs for patients. These cost saving changes that are under consideration would eliminate some procedural requirements which are not directly related to the quality of patient care. In addition, revisions to the Life Safety Code requirements will affect the cost of these regulations. (See related description of Life Safety Code requirements.)

However, new requirements under consideration could result in increased costs. The major new requirement under consideration is the proposed patient assessment provisions. These proposals concern a comprehensive assessment of all patients' health needs when they enter the nursing home and a system for evaluating the patient's progress on a regular basis.

#### Sectors Affected

The regulations affect institutional providers, patients, and staff of SNF's and ICF's participating in the Medicare and Medicaid programs. State health agencies will also be involved in any revisions to these rules.

#### Related Regulations and Actions

*Internal:* As part of "Operation Common Sense" (the HEW-wide operation to make regulations clear, concise, and understandable to the general public), the Department intends to review and revise all standards and certification regulations which affect providers participating in the Medicare and Medicaid programs. At the present time, we are revising the HEW regulations on Conditions of Participation for Hospitals.

*External:* None.

#### Active Government Collaboration

We are working with the Federal Trade Commission, which is concerned with patient rights in nursing homes.

HEW/HCFA is also consulting with State agencies.

#### Timetable

NPRM—winter 1979-80.

Extended Comment Period—following the NPRM.

Final Rule—summer 1980.

Regulatory Analysis—draft with NPRM, final with Final Rule.

#### Available Documents

"New Directions for Skilled Nursing and Intermediate Care Facilities," (Summaries of Public Hearings), September 1978.

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#### HEW-HCFA

**Life Safety Code in Hospitals, Skilled Nursing Facilities (SNF's) and Intermediate Care Facilities (ICF's)**

#### Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) of the Social Security Act, 42 U.S.C. § 1302.

#### Statement of Problem

Hospitals and nursing homes must meet a number of requirements in order to participate in the Medicare and Medicaid programs, which finance health services for many elderly and low income families. These requirements are set out in the Social Security Act and in HEW regulations. One of the requirements is the life Safety Code (LSC) of the National Fire Prevention Association (NFPA). The LSC contains a detailed set of standards, mostly related to safety aspects of the physical plant, such as structure, fire prevention systems, and hazard alarms.

Current procedures may unnecessarily require hospitals and nursing homes to undertake large capital expenditures to correct LSC deficiencies. The result of enforcing strict compliance with each LSC requirement is that:

1. Some institutions cite nonconformance with the LSC as the basis for complete replacement of a facility. This may increase health costs and would be especially unnecessary in areas which already have more hospital or nursing home beds than needed.
2. Some major structural changes are made in obsolescent facilities with short life of service expectancies to bring them into compliance.

The LSC permits uses of alternative means of protecting patient safety which may be less costly than strict adherence to the specific standards in the LSC. In 1974, HEW asked the National Bureau of

Standards in the Department of Commerce to develop a rating system to assess a facility's life safety provisions without requiring vigorous adherence to each specific standard. The Department of Commerce approved "A System for Fire Safety Evaluation of Health Care Facilities," developed by the National Bureau of Standards, in December 1978. Under this new rating system safety provisions are assigned numerical values. Therefore two facilities with differing safety provisions could still be rated as having equivalent levels of life safety.

#### Alternatives Under Consideration

The major alternatives are:

1. to continue the current HEW policy of requiring hospitals and nursing homes to meet the specific standards in the
2. to permit hospitals and nursing homes to meet either the LSC or an equivalent level of safety as measured by the rating system developed by the National Bureau of Standards; or
3. to permit hospital, but not nursing homes, to use equivalent means.

#### Summary of Benefits

HEW is considering using the rating system developed by the National Bureau of Standards, because it could allow facilities to select less costly means to protect patient safety. This could reduce the cost of health care while maintaining the current quality.

#### Summary of Costs

The cost savings are potentially very significant, but the savings will vary based on the options that individual facilities select to assure patient safety. We expect the cost savings to be greatest in older facilities. HCFA is developing estimates of cost savings.

#### Sectors Affected

The rule would affect hospitals and nursing homes (including skilled nursing facilities and intermediate care facilities) which participate in Medicare and Medicaid. Additional sectors of the economy that these changes will interest are: manufacturers, insurance companies, and several health professional organizations.

#### Related Regulations and Actions

*Internal:* ANPRM—Intent to reconsider regulation on automatic extinguishment systems for long-term care facilities, 43 FR 57166, December 6, 1978.

*External:* None.

#### Active Government Collaboration

HEW has worked with the National Bureau of Standards in the Department

of Commerce, which developed the system for rating equivalent means of achieving LSC standards. HEW is also collaborating with the Veterans Administration, which has adopted the National Bureau of Standards system for Veteran's hospitals.

#### Timetable

Final Notice for Hospitals—December 1979.

Final Notice for SNF's and ICF's—December 1979.

Regulatory Analysis—not required.

#### Available Documents

Notice with Comment Period—44 FR 37818, June 28, 1979.

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#### HEW—HCFA

Uniform reporting systems for health services facilities and organizations

#### Legal Authority

Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (P.L. 95-142), 42 U.S.C. § 112.

#### Statement of Problem

Section 19 of P.L. 95-142 requires improved financial and statistical data from institutional providers of Medicare and Medicaid services, to accurately identify costs and to aid in the control of an ever-increasing inflation rate in health care costs. It requires the establishment of a uniform reporting system.

Since the enactment of the Medicare legislation in 1965, the costs of health care have consistently increased at a rate significantly above the overall rate of inflation. Efforts to curb this increase under existing reporting provisions have been ineffective, largely because there are no means to accurately compare costs. These regulations would establish uniform reporting systems for all health services facilities and organizations including hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, and health maintenance organizations that participate in the Medicare and Medicaid programs.

The law specifically requires regulations to establish a uniform system of reporting for the following types of information for each type of health services facility or organization:

1. aggregate cost of operation and aggregate volume of services;

2. cost and volume of services by type of activity;

3. rates by category of patient and class of purchaser;

4. capital assets, as defined by the Secretary, including capital funds and the value of land, facilities, and equipment, as appropriate; and
5. data on patient discharge bills.

We will implement uniform reporting requirements through several separate regulations, rather than implementing all facets of uniform reporting through one regulation. To date, we have completed substantial work on the system for hospital uniform reporting and have published an NPRM.

#### Alternatives Under Consideration

Within the legislative mandate certain options are available. The timing and scope of a reporting system are limited by a timetable and objectives specified in the legislation. The primary objective is to design a system that will obtain comparable cost and related data from all institutional providers participating in Medicare and Medicaid. Among other things, we intend to use this data for reimbursement purposes and to improve our capacity to detect fraud and abuse. Other factors which affect the scope of the regulation include the Department's concern with minimizing reporting burdens and eliminating placing duplicate and overlapping data requirements on the provider, while meeting the intent of the legislation.

For the regulation implementing reporting of hospital data on cost, utilization, and capital assets, the major options we chose were:

1. to merge, to the extent possible, Departmental data collection activities (e.g., Medicare and Medicaid cost reporting and hospital facilities components of the Cooperative Health Statistics Systems funded by the Public Health Service) in order to coordinate reporting requirements and minimize burdens on the hospitals furnishing the data;

2. to reduce cost reporting requirements for small facilities (less than 4,000 admissions annually), since they generally have fewer cost centers than large hospitals and less information to report;

3. to limit, to the extent possible, the level of detail required to ascertain the cost of services provided for specific cost centers, in an effort to decrease the reporting burden. For example, the system would report employee work-time on a sample basis instead of requiring detailed time reporting.

We designed these alternatives to minimize the level of detail and the cost of providing the information, while

permitting accurate comparisons of costs between hospitals furnishing the same type of service or care.

For the regulation implementing the collection of hospital bill and discharge data, the major areas of consideration are:

1. confidentiality regarding data collection on non-Federal patients and physicians,
2. method of data collecting and processing the bill and discharge data.

#### Summary of Benefits

Uniform reporting systems are being designed with the intent of reducing and eliminating costly multiple collection and processing of the same data. Data collected via the uniform reporting systems will be provided to any interested parties, eliminating the need for many duplicative systems.

These systems will enable the Department to obtain the uniform comparable data that are necessary for reimbursement, effective cost containment and policy analysis assessment of alternative reimbursement mechanisms, and health planning. Adequate and comparable data are not presently available to support these objectives. Attainment of these objectives will aid efforts to curb the inflationary spiral of health care costs.

Providers will receive valuable management information that they could use to assess efficiency at all levels of their operations. This would permit them to control expenditures for supplies, services, and capital.

A uniform reporting system for home health agencies is in the early planning stage. The Department commissioned an accounting cost study on June 11, 1979 and will publish an NPRM after HCFA has reviewed the results of that study. At that time, we will make an estimate of industry and government costs for implementing the system. We expect cost savings that are derived from the bill and discharge portions of § 19 to offset the costs associated with the cost and utilization of reporting regulations.

#### Summary of Costs

HCFA is developing firm estimates of the cost of implementing the uniform reporting system for all health services and organizations. It has cost estimates specifically for the regulation implementing uniform reporting of costs for hospitals. For the 6,000 affected hospitals, based on the experience of States that have similar systems, HCFA estimated that the total start-up costs to the industry and government for the hospital cost reporting segment would be between \$35 million and \$75 million.

HCFA awarded a contract to an accounting firm to determine the actual cost and burden of implementing the hospital cost reporting system, as well as possible savings that might result from refinements in the current Federal reimbursement system for hospitals. The results of this study showed total costs of \$70.2 million nationwide, for an average of about \$14,000 per hospital. Following extensive public comment, HCFA has revised the requirements of its cost reporting system in an effort to further reduce the cost of the system.

#### Sectors Affected

Sectors of the economy affected by these regulations are hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations and other types of health services facilities, and organizations that participate in the Medicare and Medicaid programs.

#### Related Regulations and Actions

*Internal:* On January 23, 1979, HEW published an NPRM for collecting data on cost, utilization, and capital assets from hospitals. Because of extensive public comment, HCFA is currently preparing a revised reporting manual, and the Department will publish a second NPRM to obtain further public comment.

HCFA is developing similar regulations for long-term care facilities, home health agencies, and health maintenance organizations. Other regulations under development pertain to discharge and bill data.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

NPRM: Hospital Utilization and Reporting—December 1979.

Regulatory Analysis—draft with NPRM, final with Final Rule.

NPRM: Health Maintenance Organizations and Home Health Agencies.

Regulatory Analysis—to be determined.

Costs Utilization Reporting—January 1980.

NPRM: Hospital Bill and Discharge Data—December 1980.

Regulatory Analysis—to be determined.

We are still preparing the NPRM for Long-Term Care Cost and Utilization Reporting, and we have not yet set a date.

Regulatory Analysis—to be determined.

#### Available Documents

NPRM—44 FR 4741-44, January 23, 1979.

"Uniform Reporting Systems for Health Services Facilities and Organizations," Systems for Hospital Uniform Reporting, HEW draft Manual, December 1978. (Copies of this manual are no longer available for public distribution. The revised manual will be available at the time we publish the second NPRM.)

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Mandatory safety standards for surface coal mines and surface area of underground coal mines

##### Legal Authority

The Federal Mine Safety and Health Act of 1977, § 101, 30 U.S.C. § 801.

##### Statement of Problem

There are approximately 89,000 miners currently working in surface coal mines and surface areas of underground mines. The Mine Safety and Health Administration statistics for 1978 reveal a fatality rate of .04 and an injury rate of 4.08 per 200,000 hours worked. This is considerably lower than the underground rates of .07 and 10.62 for fatalities and injuries, respectively. The primary causes of fatalities are hauling and machinery accidents. The Mine Safety and Health Administration has reviewed all existing safety standards for surface coal mines and comments received from industry and labor representatives, and has determined that there is a need to strengthen and clarify certain provisions. In addition, some subparts and sections of the existing standards need reorganizing in order to facilitate their use by operators and inspectors. Standards for illumination, guarding of electrical equipment, examination and testing of high voltage circuit breakers, protection of direct current circuits, protection of low and medium voltage alternating current circuits, mine maps, and locations for magazines are expanded to include additional requirements. The Mine Safety and Health Administration has also decided that some new areas,

such as protection of electric wiring and equipment and handling of energized trailing cables and portable feeder cables need to be included.

#### Alternatives Under Consideration

This regulation, which was first proposed in 1977, covers all of the safety requirements for surface coal mines and surface areas of underground coal mines. The Mine Safety and Health Administration will be evaluating the proposal to determine which of the specific standards it should repropose. We will make this determination within the framework of the Federal Mine Safety and Health Act of 1977 and its requirements. For example, one alternative might be to exclude requirements for supervisory training in light of the mandatory safety and health training regulations which the Mine Safety and Health Administration published on October 13, 1978.

#### Summary of Benefits

The Mine Safety and Health Administration expects that these improved standards will help reduce fatalities and injuries in the coal mining industry. Standards which cover improved methods of handling and maintaining equipment should provide greater protection for surface mines. Fewer injuries and fatalities will result in reductions in lost workdays, workers compensation benefits, and medical costs.

#### Summary of Costs

We proposed these regulations in January 1977, and at that time economic estimates revealed that it would cost approximately \$44 million in the first year for the industry to comply with the proposal. The principal costs were related to additional requirements for low resistance grounding media handling of energized trailing cables and portable feeder cables, protection of direct current circuits, guarding of high voltage equipment, examination and protection of high voltage circuit breakers, protection of low and medium voltage alternating current circuits, illumination, guarding of electrical equipment, and protection of electric wiring and equipment. The 1977 estimates were as follows: (1) illumination—\$20 million; (2) guarding of electrical equipment—\$1.6 million; (3) protection of electric wiring and equipment—\$2.2 million; (4) high voltage circuit breakers, examination—\$.6 million; (5) energized trailing cables—\$.9 million; (6) protection of direct current circuits—\$.2 million; (7) guarding of high voltage equipment—\$3.2 million; (8)

booms and masts, warning devices—\$3.5 million.

The initial estimate does not take into consideration industry expansion and overall cost increases due to inflation since 1977. Industry costs to comply may well exceed \$50 million. Approximately ninety percent of the costs are associated with one-time equipment purchases, and therefore they are expected to decline drastically for the second year.

#### Sectors Affected

Operators of surface coal mines, miners, and representatives of miners.

#### Related Regulations and Actions

*Internal:* The Mine Safety and Health Administration has regulations setting forth requirements for underground coal mines—30 CFR 75. The Mine Safety and Health Administration is working on safety and health standards for construction work on mine property—30 CFR 110.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

ANPRM—December 31, 1979.

Regulatory Analysis—to be issued with subsequent NPRM.

#### Available Documents

The earlier NPRM is available for public review, 42 FR 2800, January 13, 1977.

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#### DOL-MSHA

Regulations setting forth requirements for safety and health training for mine construction workers

#### Legal Authority

The Federal Mine Safety and Health Act of 1977, §§ 101 and 115, 30 U.S.C. §§ 811 and 815.

#### Statement of Problem

Preliminary industry estimates reveal that there are approximately 75,000 employees engaged in mine construction work, and the Bureau of Labor Statistics of Department of Labor data reveal that construction is a high hazard industry. In 1977, based on data from the

Occupational Health and Safety Administration (OSHA), the incidence of accidents and injuries for all workers in the private sector was 9.3 per 100 full time workers; however, it was 15.5 for construction workers. The Mine Safety and Health Administration (MSHA) has no separate accident and injury statistics, to date, for construction workers on mine property. Section 115(d) of the 1977 Federal Mine Safety and Health Act requires that the Secretary of Labor promulgate appropriate standards for safety and health training for construction workers. These regulations will require that all construction workers on mine property be appropriately trained in the safety and health hazards of their jobs.

#### Alternatives Under Consideration

MSHA is considering the following alternatives to be included in the draft regulation: what amount of training will be required; how often will training be required, i.e., there might be a need for refresher training; what training can be substituted for that which may be required by the regulation. MSHA believes that an important consideration in the development of the regulation will be to determine exactly what kind of training is currently being provided, so that MSHA can give appropriate credit for such training, to avoid any duplication of industry and labor training effort.

#### Summary of Benefits

MSHA expects that these regulations, when they are promulgated and complied with, will provide a strong framework for reducing the injuries, illnesses, and fatalities which are associated with mine construction work. Our long term goal is to measurably reduce the hazards related to construction in the mining workplace so that mine construction will no longer be viewed as high hazard work. We anticipate that the 15.5 incidence rate we mentioned previously can be reduced for construction workers on mine property, resulting in fewer lost work days and therefore economic benefits to industry.

#### Summary of Costs

MSHA is developing estimates for the costs of complying with these regulations. Since MSHA is only in the drafting stage with respect to this regulation, the cost estimates will depend, in large part, upon the final make-up of the regulation, including categories of training required, hours of training, etc. Costs will cover wages, per diem, costs for replacement personnel, etc.

**Sectors Affected**

Those this regulation will affect the most include the construction industry, building trades employees, mine operators, miners and representatives of miners as defined in 30 CFR 40.

**Related Regulations and Actions**

*Internal:* The Mine Safety and Health Administration is developing safety and health standards for construction work on mine property—30 CFR 110. The Mine Safety and Health Administration has existing mandatory safety and health training regulations for miners—30 CFR 48. The Occupational Safety and Health Administration has construction safety and health standards—29 CFR 1962. The Mine Safety and Health Administration has regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of § 3(d) of the Mine Act—30 CFR 45.

*External:* MSHA is currently meeting with affected labor and industry groups to get their input into this draft regulation.

**Active Government Collaboration**

None.

**Timetable**

ANPRM—February 28, 1980.

NPRM—July 31, 1980.

Regulatory Analysis—July 31, 1980, if required.

**Available Documents**

None.

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**DOL—MSHA**

**Requirements for construction and maintenance of impoundments and tailings piles at metal and non-metal mines**

**Legal Authority**

The Federal Mine Safety and Health Act of 1977, § 101, 30 U.S.C. § 811.

**Statement of Problem**

There are approximately 680 metal and non-metal tailings dams in the U.S. These tailings dams are composed of waste from metal and nonmetal mining processes. Based upon a recent survey, MSHA estimates that 15-20 percent of the existing structures pose some form of potential hazard which might result in

loss of life or damage to the environment. Improved standards governing impoundments and waste piles at coal mines were developed and published by MSHA following the dam failure at Buffalo Creek in 1972, which resulted in many injuries and fatalities. Because of recent waste dam failures at metal and nonmetal mines and the continuous potential for loss of life, MSHA decided that there is a problem related to the construction of new and existing impounding structures and that improved standards are necessary. MSHA anticipates that these improved standards will result in a reduction of injuries at the mine site, and will minimize the chances of water and waste from the ore spilling over into the surrounding environment and creating the possibility for physical damage to the land and health damage to its occupants.

**Alternatives Under Consideration**

MSHA is considering the following major alternatives: (1) The manner in which new dams will be constructed, i.e., how substantial and strong they will be. The type and specificity of requirements for these structures will affect industry costs for compliance. Although structures will, of course, have to vary depending upon the nature and geography of the mine being served and the type of waste product involved, requirements which are specific and yet allow for operator flexibility could result in more consistent enforcement and greater miner safety.

(2) Whether or not there will be a delayed effective date to allow existing facilities to comply.

(3) Whether certain existing facilities will be grandfathered. It might be feasible to include a grandfather clause in the regulation which will allow certain existing facilities to meet the requirements of the standard.

(4) Whether metal and non-metal operators will have to submit plans for the construction of waste and impoundment structures. The appropriate Department of Labor Metal and Nonmetal Mine Safety and Health District Manager would approve these plans. This requirement would increase the paperwork burden on the affected industry; however, it would insure that all new facilities are constructed in the proper manner.

(5) Include certain requirements from the Department of Army's Corps of Engineers' standards related to the construction of impoundments.

(6) Allow the existing regulation to remain in its very general form, and do nothing at all. At this time, it appears

that this alternative would not do anything to help solve the problem.

**Summary of Benefits**

Although there are no current statistics on the number of injuries that result from dam failures at metal and non-metal mines, the dam failure at the Buffalo Creek coal mine killed 125 persons and left thousands in the surrounding community homeless. Miners, people living in the surrounding communities, and the environment itself are potential beneficiaries of these regulations. Four metal and non-metal dam failures have caused damage to the surrounding public environment within the last five years. Waste water and mud were released not only onto the land, but also into the source of the local water supply. We anticipate that this regulation will reduce injuries, fatalities, and environmental damage that are associated with dam failures by setting forth more stringent requirements for waste dam construction.

**Summary of Costs**

MSHA is in the process of developing data on the economic effects of this proposal on the metal and non-metal mining industry. The final cost estimates will have to take into consideration vast differences in types of mines, types and amounts of waste products involved, and the geographical terrain. In addition, the extent to which existing facilities can comply with the regulation with only minor changes will affect the cost. We are developing further data to help determine the economic effects of this regulation.

**Sectors Affected**

This regulation will have a direct effect on operators of metal and non-metal mines, states which conduct mining activities, miners, and representatives of miners as defined in 30 CFR 40. It will also have a direct effect on people who live in close proximity to mines which have waste dams.

**Related Regulations and Actions**

*Internal:* The Mine Safety and Health Administration currently has safety standards for refuse piles at surface coal mines—30 CFR 77.214-217. The Mine Safety and Health Administration has existing Metal and Non-metal safety standards which regulate waste piles—30 CFR 55.20-10; 30 CFR 56.20-10; 30 CFR 57.20-10.

*External:* The Department of the Army has authority, through the Corps of Engineers, to regulate dams and their construction under P.L. 92-367, 86 Stat. 506-507. The Department of Interior,

Office of Surface Mining, has authority to regulate coal mine dams and waste piles under the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 445.

#### Active Government Collaboration

None.

#### Timetable

ANPRM—March 30, 1980.

NPRM—September 30, 1980.

Regulatory Analysis—September 30, 1980, if required.

#### Available Documents

None.

#### Agency Contact

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#### DOL—MSHA

Safety and health standards for construction work at all surface mines and surface areas of underground mines

#### Legal Authority

The Federal Mine Safety and Health Act of 1977, §§ 101 and 101(a)(8), 30 U.S.C. § 811.

#### Statement of Problem

Construction work at the nation's surface mines and surface areas of underground mines constitutes approximately 10-15 percent of total national construction activity, and exposes approximately 75,000 persons per year to the safety and health hazards that are associated with construction. In 1977, based on Occupational Safety and Health Administration (OSHA) data, the incidence of accidents and injuries for all workers in the private sector was 9.3 per 100 full time workers; however, it was 15.5 for construction workers. In addition, although the Mine Safety and Health Administration (MSHA) has no separate accident and injury statistics, to date, for construction workers on mine property, we do know that of the 136 fatalities which occurred at metal and non-metal mines in 1978, eight were related to construction. MSHA is currently in the process of developing complete injury, illness, and fatality data for construction workers on mine property.

Section 101(a)(8) of the Federal Mine Safety and Health Act of 1977 requires that MSHA promulgate separate separate safety and health standards

that are applicable to mine construction activity on the surface. If MSHA does not publish comprehensive regulations which address the hazards associated with all phases of construction work, protection will be lessened for this important segment of the construction industry.

#### Alternatives Under Consideration

MSHA is planning to circulate for public comment a pre-proposal draft which contains virtually all of the current requirements of the Occupational Safety and Health Administration that are related to construction. This alternative will cause less disruption to that portion of the industry which, prior to March 9, 1978 (the effective date of the transfer of the Mining Enforcement and Safety Administration from the Department of Interior to the Department of Labor), was subject to the jurisdiction of the Occupational Safety and Health Administration while working on surface mine property.

Prior to the effective date of the Federal Mine Safety and Health Act of 1977, all construction activity in metal and non-metal mines which was not undertaken by the operator was subject to the jurisdiction of the Occupational Safety and Health Administration. This was by far the largest portion of construction work at metal and non-metal mines. Thus, construction contractors working at metal and non-metal mines had to comply with the Occupational Safety and Health Administration's construction standards. Based upon OSHA's FY 1978 statistics, OSHA found violations during 66 percent of initial Federal inspections of construction sites. Therefore, of construction employers that OSHA inspected for the first time in FY 1978, approximately 34 percent were in compliance. All construction on coal mine property was subject to the jurisdiction of the Mining Enforcement and Safety Administration, this Agency's predecessor. The Mine Safety and Health Administration, in order to minimize the effect of these regulations on the construction industry, is planning to propose, in large part, the current construction regulations of the Occupational Safety and Health Administration. These standards will, therefore, have a minimum effect on the methods by which construction contractors do business, and will regulate no new areas.

Prior to the transfer, although MSHA had general standards for surface metal and non-metal mines, there were no specific construction standards for this segment of the industry. It is important to note, however, that this is the first

phase of rulemaking and MSHA will have to consider all comments and make changes in the draft, as necessary.

Other alternatives include:

(1) Whether there should be an index which cross references OSHA and MSHA standards. This will make it easier for construction employers who work at both OSHA and MSHA properties to comply with the standard.

(2) MSHA's standards for certain hazards, particularly blasting and explosives, are different from OSHA's. In the notice accompanying the pre-proposal draft, MSHA will specifically solicit comments on the extent of future changes to these sections.

#### Summary of Benefits

MSHA anticipates that these construction standards will provide increased protection for construction workers at surface mines and reduce the incidence of accidents, injuries, and fatalities, and all attendant costs, to workers in this important segment of the construction industry. At this time, it is very difficult to quantify the anticipated benefits.

#### Summary of Costs

MSHA is developing the estimates for the costs to industry of complying with these regulations. Although these are new regulations for MSHA, they will not represent new requirements for a large segment of the construction industry as discussed above.

#### Sectors Affected

Affected sectors include the construction industry, building trades employees, mine operators, miners, and representatives of miners as defined in 30 CFR 40.

#### Related Regulations and Actions

*Internal:* The Mine Safety and Health Administration currently has coal mine surface construction regulations—30 CFR 77. The Occupational Safety and Health Administration has regulations which govern construction activity—29 CFR 1926. The Mine Safety and Health Administration has proposed regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of § 3(d) of the 1977 Act—30 CFR 45. MSHA is coordinating all aspects of this rulemaking with OSHA.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—May 30, 1980.

Regulatory Analysis—May 30, 1980, if required.

**Available Documents**

The draft construction standards are available for interested persons in the Office of Standards, Regulations and Variances.

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**DOL—Occupational Safety and Health Administration****Chemical warning systems (chemical labeling)****Legal Authority**

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

**Statement of Problem**

Approximately 25 million American workers are currently exposed to toxic chemicals where they work. A 1972 National Institute for Occupational Safety and Health (NIOSH) survey found 85,000 trade name products that are commonly used in the workplace. In 90 percent of the cases neither employer nor employee knew the identity of the chemicals in these products. The rapid proliferation of new chemicals increases the number of substances found in the workplace, and consequently increases the number of substances with which employees may be unfamiliar. Without provisions for chemical identification, workers do not know what chemicals they are using and are unaware of the potential hazards. Thus, employees are less able to properly protect themselves or seek adequate protection from their employers. Furthermore, if chemicals in the workplace are not appropriately identified, it is difficult to determine which chemicals are responsible for observed cases of occupational diseases.

**Alternatives Under Consideration**

The Agency is currently considering five major alternatives:

(1) Issue a regulation based essentially on the recommendations in the report of the OSHA Standards Advisory Committee on Hazardous Materials Labeling which was convened in 1974. The regulation would include provisions for virtually all hazardous or toxic chemicals for container labeling, chemical identification lists (compilations of all hazardous chemicals in a given workplace), substance data sheets (brief papers

containing pertinent information on the identified hazards), and employee training. This alternative would be the most comprehensive approach and would provide the greatest assurance that the objectives of the rulemaking would be achieved.

(2) Delete employee training provisions from alternative (1) to reduce the economic impact of the regulation. This alternative would remove an important mechanism for assuring that workers will understand the information provided by labeling and substance data sheets.

(3) Issue a regulation which would only apply to workplaces that are directly involved in the manufacture, reaction, processing, formulation or storage of chemicals. This would lessen the overall costs of the regulation by narrowing the scope of the standard to workplaces where serious exposures to toxic chemicals are most likely to occur. However, workers in other industries who are also exposed to toxic chemicals would not be afforded the opportunity this standard would provide for information on toxic chemicals.

(4) Promulgate a regulation which would only apply to chemicals of known toxicity, based on prior regulation by other Federal, private or international organizations. Again, this approach would narrow the scope of this regulation by limiting the number of chemicals to which this standard would apply. However, workers may be exposed to substances which are hazardous, but which may not have been investigated or listed by any organization. Workers would continue to be exposed to substances in this category without any information on their hazards.

(5) Promulgate a regulation jointly with the Environmental Protection Agency (EPA). In order to implement the requirements of the Toxic Substances Control Act, EPA is planning to issue regulations concerning identification of hazardous or toxic substances. OSHA and EPA are exploring the possibility of issuing a joint rulemaking.

**Summary of Benefits**

If OSHA promulgates a regulation that provides for the proper identification of hazardous or toxic substances in the workplace, employees will be able to determine whether their workplace exposures present a risk of impairment to their health or functional capacity. They will then be able to better safeguard themselves from exposure, and will be more likely to use respirators and protective clothing where necessary and to follow prescribed work and personal hygiene

practices. Employees will also be more likely to report chemical exposures to their physicians, increasing the probability that diseases and illnesses caused by workplace exposures will be recognized. Similarly, chemical identification will enable occupational health researchers to detect chemical causes of occupational diseases. The ultimate effect will be to reduce the incidence of occupationally related disease and death.

A regulation requiring the identification of chemicals will also assure that employers aware of the chemicals that are present in their establishments. They will then be able to take appropriate action to adequately protect their workers from harmful exposures.

**Summary of Costs**

The economic analysis for this regulation has not yet been completed. The actual cost will depend on the scope and provisions included in the final regulation. The Agency is working closely with the Environmental Protection Agency (EPA) to avoid duplication of rulemaking and to reduce compliance costs for industries that are affected by the labeling and employee information requirements that the two agencies issue. The two agencies are considering a joint rulemaking.

**Sectors Affected**

The scope of the final regulation is not certain at this time, but it will be an issue for public comment and debate following publication of the proposal. OSHA anticipates that the regulation will apply to chemicals that are used in a broad range of employments, including general industry, construction, agriculture, and the maritime industry.

**Related Regulations and Actions**

*Internal:* None.

*External:* A hazard warning regulation authorized by the Toxic Substances Control Act of 1976 is currently under development by the EPA. The regulation would require the labeling of containers and the development and availability of material safety data sheets (MSDS) to reduce unreasonable risks of injury to human health and the environment which arise from uninformed use, exposure, and disposal of hazardous chemical substances. EPA also has regulations requiring the labeling of pesticides. The Department of Transportation (DOT), Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) all have labeling regulations. DOT's regulations pertain to the bulk shipment of hazardous goods. They have

published in the Federal Register a notice of proposed rulemaking (44 FR 32972, June 7, 1979) for the display of identification numbers of hazardous materials to improve emergency response capability. FDA and CPSC regulations pertain to products for consumer consumption.

#### Active Government Collaboration

OSHA and EPA are cooperating in the development of this hazard warning rule. In addition, OSHA is actively participating in the Interagency Regulatory Liaison Group (IRLG) and its Labeling Task Force to assure that the provisions of this rule do not conflict with the existing regulations of other agencies.

#### Timetable

NPRM—early 1980.  
Regulatory Analysis—early 1980.  
Public Comment—following NPRM.  
Final Rule—early 1981.  
Final Rule effective—to be determined.

#### Available Documents

ANPRM—42 FR 5372, January 28, 1977.

"A Recommended Standard. An Identification System for Occupationally Hazardous Materials," (HEW-NIOSH, Publication Number 75-126).

Public docket of the record of rulemaking on chemical labeling (OSHA Docket H-022).

Available for review and copying at the OSHA Technical Data Center, Room S-6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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#### DOL-OSHA

Generic standard for occupational exposure to pesticides during manufacture and formulation

#### Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

#### Statement of Problem

Approximately 34,000 workers are exposed to toxic substances during the manufacture and formulation of pesticides. Pesticides are biologically active substances which are designed to kill or alter some living organism, usually designated as the target "pest." However, pesticides frequently cause health effects in whatever living

organisms are exposed to them, including humans. Extensive medical evidence in the scientific literature indicates that worker exposure to pesticides results in serious health problems, including severe skin irritation, damage to the liver and kidneys, sterility, lung damage, and central nervous system disorders. In addition, some pesticides cause cancer, genetic changes, and birth defects. Several well-publicized tragedies have occurred in recent years involving the development of adverse health effects in employees who were exposed to pesticides. Investigations of these incidents indicate that there is an immediate need for regulatory action by OSHA to reduce the risk of occupational disease in exposed workers.

#### Alternatives Under Consideration

Mandatory standards may be necessary to protect employees working in the pesticide manufacturing and formulation industries. One alternative is to develop standards for pesticides on a substance-by-substance basis. OSHA currently has permissible exposure limits for approximately 160 substances that are used as pesticides. However, the Environmental Protection Agency (EPA) has registered nearly 1,500 pesticide active ingredients which are formulated into almost 40,000 pesticide products. Thus, pursuing this alternative would significantly delay extending protection to many employees in these operations and would require a much greater investment of government resources. The generic approach to regulation, that is, regulation of pesticides as a class of hazardous substances, provides basic protection to workers more quickly and appears to be a more manageable approach for implementation by employers.

OSHA is considering several variations of a generic standard for pesticides. The basic provisions, in all cases, address emergency situations, training, medical surveillance, hygiene practices, housekeeping, and personal protective equipment. The approaches differ primarily in the degree of specification used to describe the required control measures and the "trigger points" at which certain provisions would be required.

At present, we are evaluating three approaches. The first would base requirements for control measures solely on the degree of control that is currently used in each individual workplace. For example, the employer whose employees work in an area where pesticides are manufactured in an enclosed process (one which results in minimal exposure potential for

employees) would be required to provide fewer additional control measures than the employer formulating pesticides in open vats (where the potential for employee exposure is great). Only personal protective equipment and protective respirator devices would be required—no engineering controls (such as local exhaust ventilation) would be specified. All pesticides would be regulated in the same manner under this alternative, with no differentiations with respect to toxicity.

In the second alternative, various provisions would be triggered, depending on the toxicity of the pesticide. The toxicity categorization scheme that EPA developed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 USC § 136 *et seq.*) would be incorporated into this approach. For example, employers that have pesticides in Toxicity Category I (highly toxic) in their workplaces would have to perform housekeeping activities more frequently than those with pesticides in Toxicity Category III (slightly toxic). The standard would also include detailed requirements for engineering control.

The third approach would be performance oriented, and would require the employer to assume responsibility for ensuring that proper control measures were selected and implemented when necessary. Rather than indicating what specific control measures would be required in each case, the standard would require the employer to perform a hazard evaluation and then determine the appropriate control measures on the basis of the hazards he found. Thus, the employer would be able to consider all relevant factors (for example, toxicity, physical state, current level of control) before implementing controls.

Although OSHA has not determined which alternative it will propose as a standard, the performance oriented, work practices approach seems to be the most appropriate for a generic standard. This type of standard relies heavily on the "good faith" efforts of employers to completely comply with the intent of the regulation, but it appears to be the most equitable way to deal with the large number of pesticides involved and the range of hazards they produce. The standard would provide protection for all employees in the pesticide industries immediately. OSHA may decide to develop substance-specific standards for the most hazardous pesticides at a later date.

### Summary of Benefits

The direct benefit we expect from this action is a reduction in the incidence and prevalence of the adverse health effects that are associated with occupational exposure to pesticides. The standard will also result in indirect benefits, such as reduced costs of adverse health effects to the worker, to industry and to society. For the worker and his/her family, these costs may include loss of potential earnings because of disability or premature death, medical expenditures (including hospital costs, physicians' fees, and pharmaceuticals), and intangible costs such as pain and suffering and family bereavement. The regulation will also result in declining social costs of social security disability insurance, public assistance programs, and Medicaid and Medicare payments. Employers will reap gains in productivity as a result of reductions in employee absenteeism and turnover, and from the improved health of employees. Since workers will be healthier and have fewer job-related illnesses, workers' compensation premiums may decrease. OSHA is in the process of evaluating the alternative schemes for a regulatory analysis, which will be available when the NPRM is published in the Federal Register.

### Summary of Costs

OSHA is currently estimating the direct and indirect costs of compliance of the alternatives and will make this date available at the time it publishes the proposal. We expect the costs to be significant for some of the alternatives under consideration.

### Sectors Affected

The scope of the final standard is not certain at this time, but will be an issue for public comment and debate following the publication of the NPRM. A National Institute for Occupational Safety and Health recommendation suggested that it apply to workplaces that manufacture, formulate, mix, blend, or repackage pesticides.

Establishments which primarily produce pesticide products are classified into Standard Industrial Classification (SIC) Codes 2879 (Pesticides and Agricultural Chemicals, not elsewhere classified) and 28694 (Pesticide Raw Material). Industries in a number of other SIC codes also manufacture or formulate pesticides, although not as their primary product.

In 1976, approximately 4,600 establishments employed 34,000 production workers to produce pesticides. Approximately 400 establishments manufacturing pesticides

employed 8,000 production workers, and approximately 4,200 establishments employing 26,000 workers formulated pesticides.

Many small establishments are merely registration-holders and produce pesticide raw materials or formulate pesticides seasonally on a small scale, primarily for their own use. Many of these are farmers or cooperatives operating small, simple, "backyard" facilities.

Price increases caused by compliance costs of regulating the pesticide industry will clearly affect the users of pesticides. The agricultural sector is the largest user of pesticides. But this standard would indirectly affect many diverse users: for example, pesticides are used in many workplaces to control pests.

### Related Regulations and Actions

*Internal:* OSHA promulgated a final standard for the pesticide dibromochloropropane (DBCP) on March 17, 1978 (43 FR 11514), and for inorganic arsenic, which is found in some pesticide formulations, on May 5, 1978 (43 FR 19584). The OSHA Air Contaminant Standards, contained in 29 CFR 1910.1000 of the OSHA General Industry Standards, contain maximum permissible limits for exposure to about 160 chemicals which may be used as pesticides. All of these specific permissible exposure limits will continue to apply when the agency promulgates the generic standard for pesticides.

*External:* The Environmental Protection Agency, the Food and Drug Administration of the Department of Health, Education and Welfare (DHEW), and the Departments of Transportation and Agriculture have programs for regulating the use of pesticides.

### Active Government Collaboration

The National Institute for Occupational Safety and Health (NIOSH of HEW) has prepared a criteria document including recommendations for controlling occupational exposure to pesticides during their manufacture and formulation. NIOSH is also preparing a control technology assessment of the pesticides industries. OSHA has been consistently working with NIOSH to capture information relevant to the development of an OSHA pesticide standard.

EPA has the primary federal responsibility for regulating the use of pesticides in the United States. OSHA has a working relationship with EPA such that EPA consistently makes available to the appropriate OSHA staff any disclosable information relevant to

an OSHA pesticides standard.

The State of California's OSHA program has an active pesticides division. Active working relationships have been established to exchange information and develop a pesticides data base.

### Timetable

NPRM—spring, 1980.

Regulatory Analysis—spring 1980.

Public Comment—following NPRM.

Final Rule—fall 1980.

Final Rule effective—fall 1980.

### Available Documents

"Request for comments and information—Occupational Exposure to Pesticides," 43 FR 54955, November 24, 1978.

"Criteria for a Recommended Standard . . . Occupational Exposure During the Manufacture and Formulation of Pesticides," (NIOSH-HEW, 1978).

Public docket of the record of rulemaking on the standards concerning occupational exposure to pesticides.

Available for review and copying at the OSHA Technical Data Center, Room S-6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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### DOL—OSHA

Regulation for reducing safety and health hazards in abrasive blasting operations

### Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

### Statement of Problem

Approximately 80,000 abrasive blasters (those who use sand and other abrasives in blasting work) and numerous attendants and nearby personnel face health and safety hazards in their work. The primary health hazard is lung disease due to inhaling mineral dust. The most common of these diseases is silicosis, which may lead to disability or premature death. Investigators have documented over one hundred cases of silicosis, resulting in twenty-five deaths among sandblasters, in the U.S. Gulf Coast States alone since 1958. The average duration of exposure for those sandblasters who develop silicosis is ten years, compared with forty years for the average duration of exposure for all cases of silicosis. We

are at present finalizing more complete estimates of the number of cases of lung disease among abrasive blasters.

In addition to health hazards, abrasive blasters are exposed to safety hazards including vision impairment, slipping, injury from flying abrasives, fire, and explosion. In addition, abrasive blasters have asphyxiated when their air-supply systems have malfunctioned.

The National Institute of Occupational Safety and Health has recommended that silica sand be banned as an abrasive. Numerous scientists have reported on the high morbidity and mortality rates that are associated with abrasive blasting operations. Existing regulations need to be revised to effectively address these serious hazards. For these reasons, OSHA has determined that further regulatory action is needed.

**Alternatives Under Consideration**

The agency is considering the following regulatory approaches:

(1) Revise and expand existing regulations. Existing safety and health provisions applicable to abrasive blasting operations are found in several sections of the Code of Federal Regulations. In this alternative approach, OSHA would compile them in one section. Further, the Agency would require additional engineering controls and work practices that are tailored to this operation; increased use of personal protective equipment; and improved maintenance of blasting rooms, respirators and personal protective equipment. It would expand coverage to include new categories of workers and would require monitoring, medical surveillance, recordkeeping, and worker education and training. Finally, OSHA is considering requirements for separate, oil-free compressors to supply breathing air, as well as improved lunch and hygiene facilities for workers.

The requirements for effective respiratory protection, maintenance of respirators, and improved lunch and hygiene facilities would reduce the dust inhalation hazard. The use of separate, oil-free compressors would reduce the likelihood of asphyxiation from contaminated air. The monitoring requirements would encourage proper respiratory protection, and, in addition, would provide advance warning of equipment wear and malfunction. The requirements for medical examinations and recordkeeping would help prevent silicosis and other lung disease from development and progressing.

(2) Ban the use of sand as an abrasive, in addition to carrying out all the revisions discussed above. Sand is already banned in abrasive blasting

operations in Great Britain and the Common Market countries, and the Mine Safety and Health Administration is considering a ban on its use in below ground operations.

Since dust containing silica is generated from abraded surfaces as well as by the abrasive used, banning sand will not, by itself, eliminate the silica hazard. But banning sand in conjunction with the provisions in the first alternative would be more effective than the first alternative alone in reducing the silica dust hazard. However, a ban would force the use of alternative abrasives, some of which, according to preliminary analysis, contain high levels of other toxic substances. The increased use of these substitutes may increase the prevalence of respiratory disease and cancer among abrasive blasters. Moreover, there is some indication that substitutes may not be readily available in some parts of the country and may be prohibitively expensive when they are available.

**Summary of Benefits**

Regulatory action in this area will decrease the number of cases of lung disease below what it would be in the absence of regulatory action. The reduction in exposure levels will produce a corresponding reduction in adverse health effects. OSHA is currently developing estimates of the expected reduction in disease. The Agency also expects regulatory action to result in fewer injuries and deaths related to abrasive blasting safety hazards.

**Summary of Costs**

Preliminary estimates of the incremental cost of the first alternative are listed below. The size of the range reflects variations in the stringency and timing of selected provisions of this alternative.

Type of cost	Amount (\$ millions)
Installed capital	13-185
Annual capital charge	3- 44
Annual energy	.01- 8
Annual operating and maintenance	51- 78
Total annualized	54-130

OSHA estimates that the alternative of banning sand would cost an additional \$228 million in annual operating and maintenance costs due to the extra cost of substitutes for silica sand. Since sand sold for blasting is less than 3 percent of the sales of sand suppliers, the incremental effect on sand suppliers of banning sand would be minor.

The implications of the upper bound cost estimates listed above for price, output and employment in the affected industries are displayed below. The final two ratios in the table estimate the effect on market structure.

	Percent change in price	Percent change in output	Net employ- ment change (percent)	Total annual- ized cost to profit ratio	Installed capital cost to normal invest- ment ratio
Alternative 1	0.0750	-0.0969	-0.0929	0.0167	0.0266
Ban Sand	0.1782	-0.2201	-0.5388	0.0396	0.0266

As we noted above, there may be indirect costs in health problems due to substitutes which may be used for sand.

These relatively small preliminary figures suggest that both alternatives are economically feasible for the industries affected. The Agency is preparing a final economic impact assessment; tentative results indicate that the effects on price, output, employment, and market structure will be even less than the above figures suggest.

**Sectors Affected**

The regulation will cover abrasive blasters and associated workers. The Census Bureau categorizes these workers as machine operatives (Census number 690) and construction laborers (Census number 751).

Three industries, SIC 1629 (Heavy Construction, not elsewhere classified), SIC 1721 (Painting, Paperhanging and Decorating) and SIC 3471 (Plating and Polishing), account for approximately 55 percent of the abrasive blasting operations and employ about 78 percent of the abrasive blasters.

**Related Regulations and Actions**

*Internal:* OSHA intends to develop a new standard covering the use of silica in all industries. This new standard may change the current permissible exposure level for silica and may apply to abrasive blasting operations.

*External:* The Mine Safety and Health Administration is also considering a change in the permissible exposure level for silica. In addition, it is considering banning its use in below ground operations.

**Active Government Collaboration**

None.

**Timetable**

- NPRM—December 1979.
- Regulatory Analysis—December 1979, if required.
- Public Hearings—following NPRM.
- Final Rule—fall 1980.
- Final Rule effective—to be determined.

**Available Documents**

Public docket of the record of rulemaking on safety and health hazards of abrasive blasting operations (OSHA Docket H-102).

Economic and environmental impact statements will be available when a standard is proposed.

Available for review and copying at the OSHA Technical Data Center, Room S-6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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**DOL-OSHA**

**Safety and health regulations for construction activities in tunnels and shafts**

**Legal Authority**

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

**Statement of Problem**

During the five year period starting in 1971 at least six catastrophic incidents involving explosion, fire, or flooding took place at underground worksites. These disasters resulted in 48 deaths, 42 injuries, and millions of dollars in property damage, and the toll could have been greater except for a particularly fortunate set of circumstances at the time of the accidents. In addition, many workers in underground operations are subject to other life threatening hazards on an almost daily basis. To reduce the incidence of future catastrophes, the Occupational Safety and Health Administration (OSHA) is revising its workplace construction standards for underground operations to cover hazards that are not currently regulated.

Currently, billions of dollars worth of underground construction projects are underway or scheduled. These include subway systems in five major cities and numerous water and sewer lines and utility networks. OSHA estimates that up to 350,000 workers per year may be involved in situations that present repeated opportunities for major disasters. Tunnels and shafts for mining operations are regulated by MSHA.

OSHA promulgated safety and health regulations for tunneling operations on April 17, 1971. During the ensuing years of enforcement, interested parties have identified a number of problem areas.

For example, some rules were claimed to be overly stringent. Under the current standard, fire-resistant fluids are required to be used in underground hydraulic systems. Equipment manufacturers and employers claim that the use of such fluids considerably reduces the lifespan of certain machinery and that alternative methods of protection, such as fire suppression systems, should be allowed. Conversely, others have suggested more specific rules to deal with potentially explosive gas atmospheres in tunnels and the improvement of hoisting equipment to prevent the recurrence of past catastrophes.

In addition, some of the current rules need updating and clarification. As a result, the proposed standard will rely on more current information to prohibit those work conditions which needlessly contribute to the most serious accidents.

**Alternatives Under Consideration**

One alternative to the proposed regulation is to maintain the current OSHA standard for underground operations. However, as we described above, this standard is outdated or unclear in several instances, and limited in coverage in others. OSHA will identify other alternatives to the proposed standard in the process of analyzing supporting data for a regulatory analysis, which will be available in early 1980. OSHA will evaluate each provision with an orientation toward performance standards.

**Summary of Benefits**

The benefit from a revised regulation will be reduction in the fatalities, injuries, and losses we cited in "Statement of Problem." OSHA will undertake a study to provide better estimates of the frequency and severity of these incidents and the expected changes in these rates that will result from the enactment of a revised standard. Fewer accidents will reduce lost wages, medical expenses, and property damage and will increase productivity as a result of reduced production downtime. In addition, less restrictive safety requirements for certain machine operations may substantially increase productivity without jeopardizing worker safety.

**Summary of Costs**

To thoroughly evaluate the feasibility of the proposed standard OSHA will estimate the costs of each provision. OSHA will include these data in a regulatory analysis if the Agency determines that this action has a major impact by Department of Labor criteria, which is a compliance cost of \$100

million for all affected industries or a significant disruption of the labor force.

**Sectors Affected**

The industrial sectors that the proposed standard will primarily affect are the tunneling and the drilled shaft industries. Many of these operations are included under the following Standard Industrial Classification codes: 1611 (highway and street construction, except elevated highways), 1623 (water, sewer, pipeline, communication, and power line construction), 1629 (heavy construction, not elsewhere classified), and 1794 (excavating and foundation work). The construction firms will initially bear any new compliance costs, whereas their employees will benefit from safer working conditions. However, a revised regulation will also affect other sectors. For example, the standards will affect taxpayers to the extent that government construction projects become more or less expensive. They will affect consumers if transportation or private utility charges increase as the costs are passed on. The data OSHA collects for the preparation of the regulatory analysis will provide a detailed description of these effects.

**Related Regulations and Actions**

*Internal:* The Mine Safety and Health Administration (MSHA) has promulgated regulations for metal and non-metal mining activities, including tunnel and shaft construction.

*External:* The American National Standards Institute, Inc. (ANSI) has undertaken the development of a voluntary standard for the construction of tunnels, shafts, and caissons. Also, a number of states operating their own safety and health plans under an agreement with OSHA have tunneling regulations. Some states mirror the OSHA regulations and others, such as California and Michigan, have developed their own regulations, which OSHA considers to be as effective as the Federal regulations.

**Active Government Collaboration**

The proposal will include the health and safety requirements for design, permissibility, and suitability for mobile diesel-powered transportation equipment (Schedule 31) which the Bureau of Mines, Department of Interior developed. Also, OSHA will propose self-rescuer requirements approved by the Mine Safety and Health Administration (MSHA) of DOL and the National Institute for Occupational Safety and Health (NIOSH). Coordination with MSHA will continue regarding regulations that cover similar hazards.

**Timetable**

NPRM—early 1980.  
 Regulatory Analysis—early 1980, if required.  
 Public Comment—following NPRM.  
 Informal Hearing—following NPRM.  
 Final Rule—fall 1980.

**Available Documents**

Transcript of public meetings held by the OSHA Construction Safety and Health Advisory Committee.

Transcript of public hearing held on June 26, 1974.

Previous NPRM—39 FR 10216, March 18, 1974.

Written comments received relative to the previous proposal.

These documents are available for review and copying at the OSHA Technical Data Center, Room S-6212, Third and Constitution Avenue, N.W. Washington, D.C. 20210.

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**DOL—OSHA****Safety standard for walking and working surfaces in general industry****Legal Authority**

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

**Statement of Problem**

Occupational injuries resulting from accidents associated with unsafe walking and working surfaces account for 20 to 25 percent of all occupational injuries in general industry and construction. The National Safety Council estimates that the cost of injuries and fatalities resulting from these hazards may reach \$5 billion annually. The present OSHA standards for walking and working surfaces are obsolete. Many provisions have been replaced by updated voluntary standards; other provisions have been held invalid by court decisions, while still others have been modified by OSHA program directives or variances in an attempt to deal with problems of interpretation. There is a need to replace these OSHA specification oriented standards with clearly stated performance oriented standards. Also, specific hazardous items that are not currently covered need to be included.

OSHA bases this proposed action on over five years of data collection, including responses to a 1976 ANPRM

and a major effort to make revisions of standards consistent with model building codes used in cities and states and voluntary standards such as those of the American National Standards Institute (ANSI). OSHA has closely coordinated its activities with professional and trade organizations and representatives of industry and labor.

**Alternatives Under Consideration**

The first alternative, a comprehensive revision of the existing standards, would incorporate performance-oriented standards, language simplification, and additional coverage for hazards that are not currently regulated. The performance-oriented standards would permit and encourage more flexibility in controlling hazards. It is likely that greater flexibility would lead to more effective protection at decreased expense. As part of the first alternative the Agency would include an appendix as a part of the standards document to aid employers and employees in complying with the performance-oriented standards by demonstrating alternative methods of compliance.

Alternative two is a phased effort to remedy major problems in the existing standards, rather than a comprehensive revision. Under this alternative the Agency would not address many gaps and shortcomings in the current standards. This alternative would not include an appendix.

Alternative three is to leave the present standards as they are.

The advantage of alternative one is that it would address the most important problems of the existing standards. It would fully use the research work, the support studies, and the outside assistance that has been provided to OSHA. It would advance regulatory policy objectives to permit more flexible and cost-effective compliance methods, reduce inconsistency among several regulatory standards and codes, and would simplify regulatory language. However, alternative one may have a major economic effect, because it would cover a greater number of hazards than does the present standard. Moreover, it would involve a greater number of interested parties in rulemaking procedures, because of a wider range of issues. It would also require OSHA to provide retraining of field staff for enforcement of the new, revised standards.

Alternative two may cost the affected employers less and it may simplify the rulemaking process. However, it would not address many important hazards which are presently causing worker injuries. In addition, it would not advance OSHA's stated regulatory

policy to promulgate more performance oriented standards.

Alternative three would greatly hinder OSHA's enforcement and consultation efforts. Certain hazard areas would remain totally unregulated. The Agency would increasingly suffer loss of cooperation with many organizations and individuals who have contributed significantly to the development of proposed revisions. Eventually, OSHA might have to expend considerable resources in redoing or updating the research data and injury studies which are now available. In addition, there would be no immediate hope of addressing hazards that may account for up to one fourth of all occupational injuries.

Adoption of any of the three alternatives would have some effect on all workplaces that are covered by OSHA, except for those in construction and the maritime and agricultural industries, which are covered by other standards. Under alternatives one and two OSHA would stagger the effective dates for implementation to enhance voluntary compliance and to minimize potential economic effects, as well as to provide time for OSHA to implement an enforcement strategy.

**Summary of Benefits**

The primary benefit of improved standards for walking and working surfaces is to reduce injuries, deaths, and the associated costs, as stated above in the section, "Statement of Problem." There is some potential for reducing these costs through regulatory action, since several fatality/catastrophe studies indicate that the majority of accidents results from improper operating and maintenance procedures such as overloaded scaffolds, unsafe or non-existent guardrails, no safety harness, and so forth. If clearer and more cost-effective standards gain wider acceptance and compliance so that accidents are reduced by 10 percent, annual productivity losses alone could be reduced by \$500 million.

These estimates are compounded by uncertainties; nonetheless, it is a given that occupational injuries contribute immediately and directly to losses in national productivity while at the same time contributing additional inflationary pressure to the hospitalization and medical services sectors.

The regulatory action might also provide benefits for users and suppliers of products such as guardrails, ladders, safety harnesses, and so forth, in the form of economies of scale and increased demand. Flexible standards for such products would permit greater

cost-effectiveness than plant-by-plant user design and fabrication. Compatibility with model codes and professional design criteria, coupled with greater flexibility for technological innovation and cost-effectiveness by manufacturers and users alike, would create additional incentives for hazard reduction. The present specification standards prescribe solutions which inhibit innovation and which contain built-in obsolescence.

OSHA would implement schedules to minimize obsolescence of equipment and facilities that are now in place. The Agency is preparing an economic impact assessment to evaluate and determine how to minimize economic effects and to assess advantages and disadvantages which may result from the proposed revision.

#### Summary of Cost

The cost of alternative one, which is the comprehensive revision using performance-oriented standards, may exceed \$100 million. These costs primarily affect the private sector and include every employer who is covered by the general industry standards of OSHA. OSHA is conducting an economic analysis to determine the effect on employees, employers, industry, and manufacturer groups. However, due to the variety of covered hazards throughout general industry, OSHA has not yet determined whether the costs will exceed the criteria for a major action, which are \$100 million compliance cost for all affected industries, or significant work force disruption.

#### Sectors Affected

The improved standards will directly benefit employees who use ladders, safety belts, scaffolds, ramps, stairs, etc. Employers will benefit from the flexibility for compliance that the performance standards provide. The expected reduced injury experience and workmen's compensation cost and any increases in compliance costs will affect almost all sectors. This proposal will not directly affect construction, maritime, and agricultural employers.

#### Related Regulations and Actions

**Internal:** Following this action, OSHA will revise its present standards for walking and working surfaces in the construction and maritime industries. The agricultural standards do not need revision at this time.

**External:** Publications by The American Society for Testing and Materials, The American National Standards Institute, The American Society of Civil Engineers, and the

National Fire Protection Association contain, or soon will contain, related voluntary standards for many of the products and installations that this proposal addresses. OSHA has shared its research efforts with all of the affected standards development groups. In addition, the Consumer Product Safety Commission has been working on a standard for ladder construction and is coordinating with OSHA.

#### Active Government Collaboration

The Consumer Product Safety Commission and OSHA have been interacting to establish satisfactory ladder performance standards.

#### Timetable

NPRM—spring 1980.  
Regulatory Analysis—accompanying NPRM, if required.  
Public Comment—following NPRM.  
Public Hearings—in at least three cities.  
Final Rule—to be determined.  
Final Rule effective—to be determined.

#### Available Documents

ANPRM—41 FR 17102, April 23, 1976.  
Comments and transcripts from town meetings. . . OSHA Public Reading Room S6212, U.S. Department of Labor, Washington, D.C. 20210.

These documents are available for review and copying at the OSHA Technical Data Center, Room S6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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#### DOL—OSHA

#### Standard for occupational exposures to hexavalent chromium

#### Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

#### Statement of Problem

Approximately 250,000 workers are currently exposed to potentially harmful levels of chromium in its hexavalent state (valence is a number indicating the capacity of an atom and certain groups of atoms to hold others in combination). Eight-hour time-weighted average (TWA) sampling results indicate that over one thousand workers are exposed to airborne levels of fifty micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) or greater, and

over 50 percent of all exposed workers are exposed to concentrations in excess of  $10 \mu\text{g}/\text{m}^3$ .

The National Institute for Occupational Safety and Health (NIOSH) and other sources have provided OSHA with data which indicate that while OSHA presently limits exposures to hexavalent chromium to  $100 \mu\text{g}/\text{m}^3$ , a specific, comprehensive regulation of this toxic substance is necessary. Workers risk developing a wide variety of adverse health effects that are attributable to exposure to hexavalent chromium. There is evidence of dermatological effects (including skin ulceration and allergic contact dermatitis), respiratory effects (including perforation of the nasal membrane, nasal discharge, irritation of the throat, and respiratory spasms), and systemic effects (including liver damage, kidney abnormalities, erosion and discoloration of the teeth, perforation of the eardrum, and abdominal pain). In addition, OSHA is investigating the epidemiologic evidence in workers and experimental results in animals which suggest that certain hexavalent chromium compounds have the potential to induce cancer.

OSHA is developing a proposal to regulate occupational exposure to hexavalent chromium and possibly other chromium compounds, as determined by available health data. The performance regulation would set a permissible exposure limit (PEL) for hexavalent chromium, and affected industries would have the opportunity to implement measures to comply with this new PEL for their operations in a cost-effective manner. The regulation may also require the employer to perform medical surveillance of exposed employees, periodic monitoring of the workplace environment, and employee training and education. Failure to act expeditiously will prolong the occurrence of the preventable incidence of diseases, disability, and mortality associated with hexavalent chromium exposures.

#### Alternatives Under Consideration

The Agency will consider a range of alternative performance PEL's, including: (1)  $10 \mu\text{g}/\text{m}^3$  TWA with a  $25 \mu\text{g}/\text{m}^3$  ceiling above which no employee may be exposed, (2)  $1 \mu\text{g}/\text{m}^3$  TWA with a  $10 \mu\text{g}/\text{m}^3$  ceiling, and (3) lowest technologically feasible TWA with no ceiling or with an appropriate ceiling (such as 10, 25, or  $50 \mu\text{g}/\text{m}^3$ ). Other provisions requiring engineering controls, work practices, and hygiene facilities may supplement the PEL. The Agency has asked for public comment on possible alternatives for limiting

workers' exposures to hexavalent chromium.

Studies indicate that at least some chromium compounds in the hexavalent state are cancer-causing agents. Some scientists argue that all hexavalent chromium compounds should be presumed to be carcinogenic and regulated as such. Others believe that carcinogenic and noncarcinogenic forms of hexavalent chromium can be identified and that OSHA should develop separate standards. OSHA will consider the merits of each of these regulatory options.

Still another approach is to establish regulations for hexavalent chromium on the basis of the feasibility of compliance for different industries. Specific requirements of the standard would differ according to the feasibility of various control measures in different industries or processes where the potential for exposure exists.

#### Summary of Benefits

The direct benefit we expect from controlling exposure to hexavalent chromium is the reduction in incidence and prevalence of the health effects we cited in "Statement of Problem." One indirect benefit will be a reduction in the private and social costs of these occupationally-related health effects. Hospital costs, physician services, pain and suffering, disability benefits, and premature death constitute the bulk of these costs. These costs are borne by private individuals, third-party payors (such as health insurance and worker's compensation insurance companies), and society at large. Employers may realize gains in productivity, since healthier workers exhibit lower rates of turnover, less absenteeism, and improved on-the-job performance. In addition, affected industries are likely to develop technological innovations which may improve production processes in general.

#### Summary of Costs

The chart below compares initial estimates of the direct costs of compliance with the various PEL's. The total annualized cost estimate is the sum of the annual operating costs and the annualized capital costs. Annualized capital costs were calculated with a standard capital recovery formula using an 18 percent discount rate and varying estimates of equipment life.

#### Preliminary Cost Estimates

(In millions)

Alternative	Capital	Annual operating	Total annualized
(1) _____	\$104	\$83	\$85
(2) _____	196	120	100
(3) _____	194	63	103

Analysis to date indicates that the chromate pigment production and use (paints, dyes, inks) industries will incur major compliance costs. Since there are competitive substitutes in this market, the demand for pigments containing chromium will likely decline. For other pigment applications, metal finishing uses, and manufacture of stainless steel, there are no available substitutes for chromium. In these cases, preliminary analysis indicates that compliance costs will be passed on to consumers. Negligible price changes are projected for upstream chromate production, catalyst production, and textile mills using chromate pigment dyes.

Some change in the number and size distribution of firms is likely to occur in pigment production, water treatment compound formulation, and chrome alloy welding. OSHA will also examine the proposed regulation's effects on employment and international trade.

#### Sectors Affected

OSHA has identified the following Standard Industrial Classifications as being potentially affected by the promulgation of a hexavalent chromium regulation: chromates and bichromates (2819), chrome pigments (2816), printing ink (2893), paints (2851), painting of metal products (3479), plating compounds (2899), chromium plating (3471), dyes (2844, 2899, 2865), catalysts (2819), water treating compounds (2899), welding (3356), and primary chromium refining (3339). Potential exposures also exist in traffic paint application, abrasive blasting operations, and the manufacture of plastics colorants, special chemical formulations, and wood treatment products.

Potential exposure to hexavalent chromium is widespread in industries across the nation. OSHA is compiling additional information on the demographic and health status of workers who will benefit directly from this regulatory action.

#### Related Regulations and Actions

*Internal:* The OSHA Air contaminants Standards found at 29 CFR 1910.1000, Table Z-2, of the Agency's General Industry Standards, specify a maximum PEL of one milligram per ten cubic meters of air as chromic acid and chromates. This is the equivalent of 100

$\mu\text{g}/\text{m}^3$  and is calculated as an eight-hour TWA. Table Z-1 specifies a ceiling exposure value of 0.1 milligram per cubic meter with a notation to avoid skin contact for tert-Butyl chromate as chromium trioxide.

*External:* The Environmental Protection Agency (EPA) has issued the following regulations for the control of chromium pollution: (1) .05 mg/liter in drinking water, (2) 4 mg/liter effluent guideline in wood preserving, and (3) 1 mg/liter (daily maximum) and 0.5 mg/liter (30 day average) in the manufacture of chromium metal and ferroalloys, and 0.1 mg/liter (daily maximum) and 0.5 mg/liter (30 day average) as hexavalent chromium. In addition, EPA has proposed the following regulations: (1) 0.5 mg/liter in leachate from hazardous wastes, and (2) 4.2 mg/liter (daily maximum) and 1.6 mg/liter (30 day average) in electroplating effluents.

#### Active Government Collaboration

Information sharing with the National Institute for Occupational Safety and Health (NIOSH) and the Environmental Protection Agency (EPA).

#### Timetable

NPRM—spring 1980.

Regulatory Analysis—spring 1980, if required.

Final Rule—spring 1981.

Final Rule effective—to be determined.

#### Available Documents

ANPRM—41 FR 18869, May 7, 1976.

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromium (VI)," (NIOSH-HEW, 1975).

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromic Acid," (NIOSH-HEW, 1973).

Public docket of the record of rulemaking on the occupational exposure to chromium standard.

These documents are available for review and copying at the OSHA Technical Data Center, Room S6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Flammability standards for crewmember uniforms****Legal Authority**

Department of Transportation Act, § 6(c), 49 U.S.C. § 1655(c). Federal Aviation Act of 1958, as amended, §§ 313(a) and 601, 49 U.S.C. §§ 1354(a), 1421, and 1424. 14 CFR 121 and 135.

**Statement of Problem**

The Federal Aviation Administration (FAA) has found that many uniform items worn by flight crewmembers are highly flammable when exposed to fire and other sources of ignition. Tests performed by the National Bureau of Standards of the Department of Commerce under contract to FAA established that fabrics presently used in making uniforms for crewmembers would not resist the effects of flame and heat flux in survivable cabin fires and could prevent crewmembers from assisting passengers in such situations. Among other actions, the FAA is considering establishing standards of flammability and resistance to heat flux for materials used in crewmember uniforms.

**Alternatives Under Consideration**

Possible alternatives to establishing flammability standards for crewmembers are:

(1) Do not require uniforms worn by crewmembers to meet any flammability standard. Although current uniform materials provide maximum comfort, range of styling, and cleanability, at present they are constructed of conventional fabric that may be ignited or may provide inadequate protection from radiant heat in survivable cabin fires. Without protective clothing, crewmembers may be incapable of performing necessary functions in certain emergencies.

(2) Require crewmember to put on special fireman-type garments in case of a fire. This option was fully explored and reported in FAA Report No. FAA-RD-77-18. Although the garment provides maximum protection from flame and radiant heat, it is very expensive and difficult to put on.

(3) Require crewmember uniforms to meet a standard similar to the current children's sleepwear standard. This is a performance standard that requires materials used for children's sleepwear to resist ignition when exposed to flame and to self-extinguish rapidly. Materials which satisfy the children's sleepwear standard must be flame-resistant, but

need not protect the wearer from radiant heat transferred through clothing.

(4) Require crewmember uniforms to meet an ignition-resistance and self-extinguishment test as well as a standard designed to protect the wearer from injury from the transfer of radiant heat through clothing. We currently regard this as the most desirable alternative, since crewmembers must be adequately protected from both flame and radiant heat injury if they are to perform their duties adequately in an emergency.

Currently, technology in the textile industry permits the establishment of a standard that protects wearers from both flame and radiant heat. Most fabrics can be treated to increase their protective qualities. In addition, fire-retardant wool and cotton are available in a wide range of colors and weights. These fire-retardant fabrics are woven of both natural and synthetic fire-retardant fibers to maximize wearability and protection. Synthetic fabrics such as Nomex are available in a variety of weights. Although these synthetics provide the greatest protection to the wearer, their range is somewhat limited because of problems with colorfastness. In the past, Nomex has been used primarily by fire and police agencies, and color choice was not a problem. If demand for more variety increases, a wider range of colors may be developed.

Although certain fabrics, such as polyester, have limited fire-retardant qualities, other fabrics of similar weight and purpose may be substituted. Fire-retardant fabrics are available that are comparable to conventional fabrics with respect to durability, color choice, style and tailoring capability, and range of fabric weight. The fire retardant properties of some fabrics can be retained through the useful life of the garment. For other fabrics, it could last through at least 50 wash/cleaning cycles.

**Summary of Benefits**

The benefits we expect from the proposed flammability standards would be increased safety for crewmembers and passengers. Flight crews would be safer in case of fire, which would increase safety for the traveling public.

**Summary of Costs**

The cost per uniform would increase, causing an economic effect for user or purchaser. No cost information is available at this time. We will include it in the Regulatory Analysis.

**Sectors Affected**

The U.S. textile and clothing industry would be affected by the economic

impact of producing new materials and clothing made from new materials. The air carrier industry would bear the cost, possibly through increased airfare, which would directly affect the paying passenger.

**Related Regulations and Actions**

*Internal:* Parts 121 and 135 of the Federal Aviation Regulations and FAA Report Nos. FAA-RD-75-176 and FAA-RD-77-18.

*External:* Federal Rule, Flammability Standard for Children's Sleepwear, 16 CFR 1616.5(a)(b)(c)(i)(ii). State and local governments have established clothing standards for some hazardous professions such as those for firemen.

**Active Government Collaboration**

The National Transportation Safety Board's comments on ANPRM 75-13 recommended that the scope be expanded to include clothing of all crewmembers, to give them the same protection as flight attendants. The National Bureau of Standards developed the technical basis for the flammability standard.

**Timetable**

The FAA is proposing standards to be listed in appendices to 14 CFR 121 and 135. The following are action and future action dates:

NPRM—February 1980.

Final Rule—pending.

Regulatory Analysis—being prepared.

Public Hearings—none scheduled.

Comments Period—90 to 120 days after we issue the NPRM.

Effective Date of Regulation—36 months after we issue the amendment.

**Available Documents**

ANPRM 75-13, issued March 13, 1975, is available from the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rule Docket (AGC-24), Docket No. 14451, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

You can get copies of FAA reports entitled "Development of a Proposed Flammability Standard for Commercial Transport Flight Attendant Uniforms," Report No. FAA-RD-75-176, and "Development of a Fire Protective Overgarment for Use by Air Carrier Flight Attendants," Report No. FAA-RD-77-18, from the National Technical Information Service, Springfield, Virginia 22161.

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#### DOT-Federal Highway Administration

#### Hours of service of drivers

#### Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. § 304.

Department of Transportation Act, 3, 49 U.S.C 1655.

#### Statement of Problem

The Federal Highway Administration (FHWA) is considering revising the regulations that limit the driving hours and prescribe rest periods for drivers of vehicles engaged in interstate or foreign commerce. It is taking this action in response to: (1) numerous requests from public interest groups, labor organizations, motor carriers, and individual drivers; (2) research studies showing driver fatigue to be a cause in commercial motor vehicle accidents; and (3) a 1974 decision of a Federal District Court involving a suit brought by PROD Inc., an interest group representing some commercial truck drivers who sought judicial review of FHWA's failure to initiate rulemaking proceedings on the hours of service regulations. The suit was dismissed by the court to allow FHWA to begin rulemaking. The dismissal allowed PROD to have the suit reinstated in 18 months if FHWA had failed to initiate rulemaking.

The objective of this regulation is to increase the overall safety of the nation's highways through the revision of current regulations governing the hours of service for drivers of commercial trucks and buses engaged in interstate or foreign commerce.

The FHWA currently limits, by regulation, the hours of service for drivers, as part of its overall responsibility for the safe operation of motor carriers. Research studies dating from the mid-1930's have indicated that fatigue causes narrowing of vision and inattention, which make drivers miss signs and signals and result in highway accidents. In 1978, more than 34,000 commercial motor vehicle accidents were reported to the Bureau of Motor Carrier Safety; many of these were single-vehicle and other accidents that involved running off of the road without apparent cause. The FHWA suspects that fatigue was a factor in many of these accidents.

#### Alternatives Under Consideration

Some of the alternatives to current regulations which FHWA is studying include longer off-duty periods for drivers between driving and/or work assignments and mandatory rest periods during long driving assignments. The FHWA is also considering simplifying the methods drivers use to record hours of service, in order to reduce the paperwork burden on both the driver and the motor carrier companies. In addition, the FHWA is considering requirements related to the following: (1) maximum weekly work hours, (2) maximum on-duty time, (3) minimum off-duty time, (4) driving hours or mileage limitations, (5) elimination of intermittent off-duty periods which extend the overall length of the work day, (6) mandatory meal periods, and (7) special provisions for night driving assignments.

#### Summary of Benefits

The FHWA believes that revisions to regulations on the hours of service for drivers would help reduce driver fatigue and ensure alertness, thereby eliminating the risk of fatigue-related accidents. This, in turn, would increase the overall safety of the nation's highways.

The FHWA expects that the revised regulation would have economic benefits, because there would be fewer fatalities and injuries and less property damage caused by highway accidents. In addition, motor carriers' operating expenses would be reduced because of fewer accidents, lower insurance premiums, and reduced compensation payments. The FHWA does not have an estimate of the savings that could result from these regulations. As we have stated, many factors impair drivers' alertness. The FHWA cannot distinguish those accidents which would be prevented by changing these regulations from those which would be prevented by taking other actions.

#### Summary of Costs

The FHWA expects that the costs resulting from these regulations may be high. Revising the hours of service regulations to restrict the hours that a driver may work could cause increased payroll expenses for motor carriers. This could lead to increases in other, operating expenses of motor carriers, resulting in increased costs to passengers and shippers for truck and bus transportation and, eventually, for goods consumed. The initial rough estimate of increases in expenses to motor carriers exceeds \$100 million annually. This estimate, however, does

not consider any offsetting benefits such as reduced vehicle downtime, minimized delays in cargo delivery, and lower insurance premiums that could result from fewer accidents.

#### Sectors Affected

This regulation would affect that portion of the truck and bus industry engaged in the interstate commercial transportation of property and passengers. Secondary sectors that would be affected include consumers of goods transported by truck and, to a lesser extent, passengers and tour groups that normally travel by bus.

#### Related Regulations and Actions

*Internal:* Current FHWA regulations restrict hours of service of drivers (40 CFR 395).

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—May 1980.

Final Rule—November 1980.

#### Available Documents

ANPRM—41 FR 6275, February 13, 1976.

Second ANPRM—43 FR 21905, May 22, 1978.

Sixteen reports or professional journal articles are referenced in the second ANPRM, 43 FR 21905, May 22, 1978.

"PROD, Inc., et al. v. Brinegar," Civil Action 2098-73, U.S. District Court, District of Columbia (May 20, 1974). This is a decision in which the District Court dismissed, without prejudice to renew in 18 months, a suit brought against the Department of Transportation (DOT) by PROD, Inc., a group representing professional drivers. The suit sought judicial review of the FHWA's failure to institute rulemaking proceedings on "hours of service."

"Effects of Hours of Service, Regularity of Schedules, and Cargo Loading on Truck and Bus Driver Fatigue," October 1978, available through the National Technical Information Service, Springfield, Virginia 22161 (DOT HS-803799).

In addition, written comments, transcripts of hearings on hours of service, and the initial Draft Regulatory Analysis are in public docket ML-70-1 and are available for review through the agency contact.

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## DOT-FHWA

### Minimum cab space dimensions

#### Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. § 304.

Department of Transportation Act, 49 U.S.C. § 1655.

#### Statement of Problem

All States and the District of Columbia impose restrictions on total vehicle length for trucks. Most of these restrictions range from 55 to 65 feet; 75 feet is the maximum length allowed by any State. However, there are no regulations for the minimum size of the cab portion of trucks. Thus, drivers of heavy commercial vehicles must sometimes drive trucks with cab dimensions which cause discomfort, thereby increasing fatigue and the likelihood of an accident. The extent of this problem is unknown.

Preliminary investigations suggest that the older truck cabs whose dimensions may cause problems are being phased out. However, reports from drivers' organizations have stated that vehicle manufacturers, in response to customer requests, are manufacturing new trucks with smaller cab dimensions to permit lengthening the cargo carrying portion of the vehicle while staying within the State-imposed overall length limits. Reducing the size of the cab could make the driver more uncomfortable, and the engine less accessible for inspection. It also can place excessive weight on the steering axle, making the truck harder to steer and overloading the front tires, which can cause flats. Some studies have linked highway accidents with these conditions.

#### Alternatives Under Consideration

If there is in fact a serious safety problem, a possible alternative to rulemaking is to propose voluntary model advisory standards for minimum cab space dimensions. The National Highway Safety Advisory Committee Report of March 1977 recommended this approach. Within the rulemaking process, the Federal Highway Administration (FHWA) is considering several alternatives. One is to exempt certain types or weight classes of vehicles from the regulations. Another is to restrict the manufacturers from placing the cab over the engine. A third alternative considers the safety of

different length cabs matched with different length trailers.

#### Summary of Benefits

The benefit of this regulatory action would be to reduce wheel and axle overloading and protect the driver's work place, thereby reducing the risk of accidents to all highway users. FHWA does not know at this time what dollar savings to expect as a result of reduced accident involvement or avoidance. The percentage of accidents that would be avoided through regulatory action is unknown, but the risk would be reduced.

#### Summary of Costs

These regulations may necessitate substantial redesign of some truck cabs. Initially, the manufacturers would bear the financial burden of accomplishing this redesign and retooling. This would lead to an increase in the cost of trucks to users. Unless the States change the allowable overall length of a tractor/semitrailer combination, the increased cab space would reduce available cargo space. This could result in smaller loads and the need for additional vehicles and drivers to ship the same amount of goods. All of these factors could increase shipping costs and eventually result in consumer price increases on all items carried by truck. Specific estimates of the costs are not available at this time.

#### Sectors Affected

The initial impact would be on the manufacturers of cargo carrying vehicles. In addition, all industries involved in interstate commercial transportation of property would be affected, because these regulations may reduce the available cargo space. Indirectly, consumers will be affected as the increased costs are passed along in the form of higher prices.

#### Related Regulations and Actions

*Internal:* None.

*External:* Fifty States and the District of Columbia have regulations limiting overall vehicle length.

#### Active Government Collaboration

None.

#### Timetable

NPRM—May 1980.

Draft Regulatory Analysis—May 1980.

#### Available Documents

ANPRM—43 FR 6273, February 14, 1978.

"Driver Profile and Body (Anthropometric) Data on Interstate Truck Driver," April 1977, available

through the National Technical Information Service, Springfield, Virginia 22161 (PB273514/AS).

"A Study of Heat, Noise, and Vibration in Relation to Driver Performance and Physiological Status," October 1974, available through the National Technical Information Service, Springfield, Virginia 22161 (PB238829).

"Cause and Control of Commercial Vehicle Accidents Involving Front Tire Failure," August 1975, available through the National Technical Information Service, Springfield, Virginia 22161 (PB245863).

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## DOT—Federal Railroad Administration

### Alerting lights display—locomotives

#### Legal Authority

Federal Railroad Safety Act of 1970, § 202(a), 45 U.S.C. § 431(a); Locomotive Inspection Act, 45 U.S.C. § 22 *et seq.*

#### Statement of Problem

Each year hundreds of persons are killed and thousands are injured in accidents at rail-highway grade crossings (the intersections of railroad tracks and highways at the same level). The National Grade Crossing Inventory maintained by the Department of Transportation (DOT) indicates the following number of grade crossings: 219,082 public; 142,338 private; and 3,601 pedestrian. During the 10-year period from 1967 to 1976, there was an annual average of 1,328 fatalities and 3,680 injuries resulting from accidents of all types at rail-highway grade crossings. In 1977, the most current year for which data has been analyzed, there was a total of 12,299 grade crossing accidents of all types resulting in 944 fatalities and 4,649 injuries. The majority of accidents, injuries, and fatalities occurred at public crossings.

To reduce the number of these accidents, the Federal Railroad Administration (FRA) of DOT is proposing to require railroad locomotives to display highly conspicuous alerting lights at public rail-highway grade crossings. The lights would provide additional warning to motorists who are approaching public grade crossings.

### Alternatives Under Consideration

One alternative to requiring the display of alerting lights at public grade crossings is to rely on voluntary action by the railroads to install and display alerting lights on railroad locomotives. In an attempt to stimulate such voluntary action, FRA would use existing studies and data indicating that highly conspicuous alerting lights reduce accidents. There are drawbacks to this alternative. First, many railroads probably would not install alerting lights. Many railroads question the effectiveness of the lights and others do not want to commit the necessary funds. If motorists are to associate alerting lights with the presence of a locomotive, the lighting system must be uniform. Second, lights with differing characteristics (color, location, flash rate, and intensity) might be installed on the locomotives. Again, uniformity of the lights used would improve the effectiveness of the system for motorists.

FRA also considered two other alternatives to determine the relative cost-effectiveness of alerting lights. One alternative is to install active warning systems (lights, bells, and gates) at all public rail-highway grade crossings; the other is to eliminate all public crossings by separating public highways from rail lines (by overpasses and underpasses). These alternatives were less cost-effective than alerting lights and prohibitively expensive—approximately \$4 billion for active warning systems and \$200 billion for grade separation.

### Summary of Benefits

A study done for the FRA, "Analysis for NPRM—Strobe Lights on Locomotives" (from here on referred to as the Study), estimated that 124 fatalities, 566 injuries, and 1,414 accidents would be avoided each year if an alerting lights system using xenon strobe lights were employed. The Study estimated the total annual benefit to be \$65 million, produced by the anticipated accident reduction. The net present value benefit, including all societal benefits, was estimated to be \$432.6 million (with present value calculations based on a 20-year project evaluation and a 10 percent discount rate). The net present value benefit is the estimated dollar savings for the full 20-year period, after subtracting the costs involved, and calculating a discount to reflect the current value of future cost savings. The Study used actual and estimated cost figures for valuation of fatalities, injuries, property damage, lost utilization of the rail line, and other costs. It used a societal cost of \$315,900

per fatality, based on a 1975 study for the National Highway Traffic Safety Administration.

### Summary of Costs

The initial cost of installing alerting lights would be approximately \$21 million over a three-year period. This would be substantially offset by the anticipated reduction in costs related to grade crossing accidents. In the short-term, costs might exceed benefits. According to the Study, however, the estimated present value cost of application and subsequent maintenance of an alerting lights system using xenon strobe lights is \$432.3 million (based on a 20-year evaluation), while the economic impact is estimated to be a benefit of \$61.4 million to the railroads.

If the short-term costs due to the capital expense of installing alerting lights exceed the short-term benefits, the financial condition of the railroad industry could necessitate recovering these costs through rate increases. (See, "A Prospectus for Change in the Freight Railroad Industry," a preliminary report by the Secretary of Transportation, October 1978.)

### Sectors Affected

The proposed rule would affect three groups. It would affect the driving public because of the anticipated reduction in rail-highway grade crossing accidents, injuries, and fatalities. It would also affect the railroad industry through accident reduction and because the industry would absorb the initial cost of installing alerting lights. It may affect shippers and the general public if the short-term costs to railroads exceed the short-term benefits, because this might result in a rate increase. Since the cost of installing alerting lights is only \$21 million over a three-year period, the affect on rates would not be large.

### Related Regulations and Actions

*Internal:* FRA requires that all grades crossing accidents be reported (49 CFR 225). FRA publishes each year a "Rail-Highway Grade Crossing Accident/ Incident Bulletin." In addition, DOT has published and periodically updates the National Grade Crossing Inventory. Railroad locomotives are required by 49 CFR 230.231 to have a headlight. In addition, the Federal Highway Administration has authority under 23 U.S.C. § 130 to fund the construction costs of projects that eliminate hazards at rail-highway grade crossings.

*External:* None.

### Active Government Collaboration

None.

### Timetable

Final Rule—January 1980.

### Available Documents

NPRM—44 FR 34982, June 18, 1979.

ANPRM—44 FR 9324, March 7, 1978.

Draft Regulatory Analysis.

"A Prospectus for Change in the Freight Railroad Industry," a preliminary report by the Secretary of Transportation, October 1978.

Analysis for NPRM—"Strobe Lights on Locomotives," Input Output Computer Services, Inc., May 26, 1978.

DOT Transportation Systems Center Study—"Grade Crossing Resource Allocation for Strobe Lights and Conventional Warning Systems," November 16, 1978.

Documents available from agency contact.

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### DOT-Coast Guard

Construction and equipment for exiting self-propelled vessels carrying bulk liquefied gases

### Legal Authority

The Port and Tanker Safety Act of 1978, P.L. 95-474, § 5, 92 Stat. 1480 (1978).

### Statement of Problem

Existing U.S. ships for carrying liquefied gas, which are called gas ships, were designed and constructed in accordance with current Coast Guard standards. The U.S. standards were developed by the Coast Guard as the need for ships capable of carrying extremely cold liquefied gas developed. However, there has never been an internationally accepted set of design, equipment, and construction standards, and virtually every nation uses its own unique standards. This has created problems, as not all countries recognize each other's standards. To alleviate this situation, the international community has agreed upon a uniform set of standards for gas ships, developed by the International Maritime Consultative Organization (IMCO). This is known as the Existing Gas Ship Code. The Coast Guard needs to evaluate the impact the IMCO Existing Gas Ship Code will have on the U.S. fleet, so we have issued an ANPRM for public comment.

### Alternatives Under Consideration

The Coast Guard has issued an ANPRM to gather information for future rulemaking. At this time, the Coast Guard is analyzing basic information on the estimated amount of equipment that would be required, the purchase price of such equipment, the availability of the equipment, the time needed for delivery and installation, and projected costs. As a result of the comments received in response to the ANPRM, the Coast Guard is considering a number of alternatives, including withdrawing the proposal.

### Summary of Benefits

The Coast Guard expects that the proposed regulation would ensure the safe transportation of bulk liquefied gases aboard existing vessels entering the United States by upgrading the minimum standards for their equipment, material, and construction. Although there have been no catastrophic accidents involving this type of vessel, routine Coast Guard inspection of existing ships has shown that, in terms of safety, some approaches to vessel construction and equipment are superior to others. In addition, the Coast Guard expects that having internationally uniform rules would aid the industry by eliminating confusing conflicts between various standards accepted in different parts of the world.

### Summary of Costs

Through an ANPRM issued in July 1977, the Coast Guard is examining the economic effect of implementing the IMCO Existing Gas Ship Code. Final estimates will not be available until we complete the regulatory analysis. One of the primary purposes of the ANPRM is to provide the information necessary to assess accurately the costs of the regulation. The Coast Guard will attempt to find the most cost-effective method of implementing the international requirements.

### Sectors Affected

The regulation may impose higher costs on the owners and operators of ships carrying bulk liquefied gas. They may pass these costs on to consumers of liquefied gas.

### Related Regulations and Actions

*Internal:* The Coast Guard recently published proposed rules for new self-propelled vessels carrying bulk liquefied gases, which is based on the existing IMCO Gas Code for new ships. The current regulations for these vessels are scattered over various parts of the Code of Federal Regulations. The proposed new gas ship regulations are expected to

have the same benefits for new construction as the regulations discussed in this entry would have for existing ships. Both sets of regulations would create unified and consolidated requirements for gas ships.

*External:* IMCO Existing Gas Ship Code.

### Active Government Collaboration

None.

### Timetable

NPRM—June 1980.

This project has been delayed because the Tanker Safety and Pollution Prevention (TSPP) Regulations discussed elsewhere in this calendar have priority over the limited resources available for drafting.

### Available Documents

ANPRM—42 FR 33353, June 30, 1977.

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## ENVIRONMENTAL PROTECTION AGENCY

### Office of Air, Noise, and Radiation

#### Environmental Standard for Inactive Uranium Mill Tailings

#### Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, § 206, 42 U.S.C. § 2022.

#### Statement of Problem

The soils and rocks which make up the earth's crust contain radioactive uranium and thorium isotopes (radionuclides). Almost all human activities which involve removing and processing materials from the earth's crust can result in the release of some of these radioactive materials into the atmosphere. These releases can become potentially hazardous when:

1. the activity involves handling materials that contain concentrations of these radionuclides significantly above the average concentrations in soil.
2. these radionuclides are concentrated during processing to a level significantly above the average concentrations in soil, or
3. the radioactive material is redistributed from its place in nature into a pathway where humans can be exposed to it.

Uranium mining operations involve removing large quantities of ore containing uranium and its radioactive decay products in concentrations up to 1000 times greater than are normally found in the natural terrestrial environment. After mining, the ores are shipped to uranium mills for separation of the uranium from the other materials in the ore. After the mill crushes and grinds the ore, the uranium is dissolved, precipitated, dried, and packaged into "yellow cake" (U<sub>3</sub>O<sub>8</sub>). The residues of the process, normally in the form of a wet sand, are discharged to a disposal area where the liquids are evaporated or partially recycled.

The tailings disposal area consists of a pond and a dry beach area. The size of each component depends on the amount of water that is recycled, the rate of evaporation, and the amount of raw ore being milled. In areas of high evaporation, large dry beach areas are exposed. Radioactive emissions from these areas result from wind erosion of the tailings and diffusion of radioactive radon gas out of the tailings. In addition, radioisotopes and other toxic substances may seep into groundwater.

The release of radon gas from piles of uranium mill tailings exposes people in the immediate vicinity of the tailings site to radioactivity and, to a lesser extent, exposes more distant populations.

Windblown radioactive particulates from tailings sites and direct gamma radiation constitute secondary sources of radiation exposure. If the tailings are uncontrolled, the Environmental Protection Agency (EPA) estimates that approximately 250 premature deaths per century could occur in the population of the North American continent from radiation-induced lung cancer resulting from emissions from these sources. These effects would be divided approximately equally between people who live within five miles of the inactive tailings piles and those in the rest of the North American continent. Health effects from potential contamination of groundwater resources are not included in this estimate. The radioactive component in the tailings will remain hazardous for hundreds of thousands of years.

The uranium mill tailings at 22 inactive sites occupy approximately 1030 acres of land, mostly in rural areas (see Sectors Affected). Because of the potential hazard of the tailings, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) requires EPA to promulgate standards of general application for protecting the public health and safety and the environment from the radiological and

nonradiological hazards associated with residual radioactive materials at these inactive sites.

If Federal and State governments take action to control releases from these tailings, the Agency estimates that the above potential health effects can be prevented, at least for periods approaching 1000 years.

#### Alternatives Under Consideration

EPA's standards for uranium mill tailings will be standards of general application. They define environmental radiation conditions which must be achieved, without specifying the means of accomplishment. We are developing the standards based on currently available knowledge of the potential harmful effects of uranium mill tailings, and the technology and costs of avoiding them. With regard to the form and content of the standards, we are considering the following alternatives:

##### 1. *Disposal Standards.*

EPA is considering an entire range of options from no control to virtually complete control of releases of radioactivity and of nonradioactive toxic substances from tailings. We find that means of providing long-term control of radon releases are available. We are examining the health benefits and costs of controlling these releases to alternative levels which are (a) significantly above the radon release rates characteristic of undisturbed land areas, (b) within the normal range of release from undisturbed lands, or (c) significantly below average rates from such lands.

We are also considering whether we should prohibit releases of toxic substances from tailings to groundwater or should limit them to levels which preserve its quality for potential uses, including drinking and agriculture. We have concluded that the combined effect of any reasonable level of control of radon releases to the air and of groundwater releases will sufficiently control all other hazards.

##### 2. *Cleanup Standards for Contaminated Open Land.*

We are considering alternative standards for cleanup of contaminated open land as follows:

a. Standards which would reduce residual radiation levels to local natural background levels.

b. Standards which would limit the residual radioactivity to levels which may be above local background, but still within the range of values observed in nature.

c. Standards which limit residual radiation to levels significantly above normal background.

We are examining the health benefits and costs of cleaning land to determine the most reasonable cleanup level.

##### 3. *Cleanup Standards for Buildings.*

Tailings have sometimes been used as construction materials for buildings. This can cause elevated radioactivity indoors and increased risk of lung cancer from breathing radioactive particles in the air. In developing remedial action standards for this condition, we are considering earlier recommendations by the U.S. Surgeon General for a similar situation at Grand Junction, Colorado and guidance provided by EPA to the State of Florida regarding indoor radioactivity. We are considering alternative standards for remedial action which take account of this earlier guidance and which reflect current assessments of the health effects of indoor radioactivity. The standards will take the form of "action levels," i.e., specifications which, if exceeded, will require remedial action. These action levels may be set in terms of the total indoor radioactivity concentrations or as an increment above average natural background levels.

#### Summary of Benefits

This regulation will provide standards of general application for a cleanup and disposal program for uranium mill tailings which will prevent up to approximately 250 premature deaths from lung cancer per hundred years.

#### Summary of Costs

The uranium mill tailings piles that these regulations would affect are at inactive sites. UMTRCA provides for the Federal Government, in cooperation with the affected States and Indian Tribes, to conduct a program to assess and remedy the hazards at such sites. When appropriate, the tailings may be reprocessed to extract residual uranium and other minerals, so long as this does not interfere with remedial actions.

By extrapolation from a preliminary estimate that the Department of Energy (DOE) provided to Congress, EPA estimates that it is possible but not likely that the cost of meeting these standards will approach \$100 million in some years, depending on the schedule to accomplish the remedial action and the sites selected for restoration. However, since the disposal program for the abandoned mill tailings piles will be undertaken at public expense by the Federal Government and the affected States, the regulation will not affect the uranium industry.

#### Sectors Affected

Inactive uranium mill tailings sites which are designated by DOE for

remedial actions under UMTRCA are located in the States of Arizona, Colorado, Idaho, New Mexico, Oregon, Texas, Utah, and Wyoming. There is also a designated site of a former radium plant located in Pennsylvania. People, including members of Indian Tribes, residing in these States, and to a lesser extent the entire population of the North American continent, would be protected from exposure to radioactivity from these materials. Federal and State governments will bear the costs of disposal. We forecast no additional public cost.

#### Related Regulations and Actions

##### *Internal:*

1. Radiation protection guidance for remedial actions on residences on Florida phosphate lands.

2. Draft proposed standard for high-level radioactive waste (in development).

3. Proposed standards for treatment, storage, and disposal of hazardous wastes under the Resource Conservation and Recovery Act.

4. Draft Clean Air Act Standards for radioactive materials (in development).

5. Proposed Environmental Protection Criteria for Radioactive Wastes and applicable Federal Radiation Protection Guidance.

6. Clean Water Act regulations.

7. National Interim Primary Drinking Water standards.

8. EPA Air Carcinogen Policy.

9. Resource Conservation Recovery Act.

##### *External:*

1. Department of Energy draft clean-up criteria for similar sites not covered by this Act.

2. Nuclear Regulatory Commission draft regulations for active and new uranium mills.

3. U.S. Surgeon General's Guidelines for remedial actions regarding tailings in Grand Junction, Colorado.

#### Active Government Collaboration

EPA is formally coordinating the development of these standards with DOE and the Nuclear Regulatory Commission (NRC). DOE is required to implement the EPA standard with the concurrence of NRC and in conjunction with the States that are affected.

DOE is also required to establish priorities for implementing the standards, in accordance with guidance which EPA has already provided.

#### Timetable

NPRM—March 1980.

Final Rule—August 1980.

Regulatory Analysis—EPA will not develop a regulatory analysis,

because the cost of implementing the standard will be borne by Federal and State governments.

EPA plans to conduct public hearings on the NPRM, but has not established a date or location for the hearings at this time. The public will have at least a 60-day comment period before the Agency issues the final rules.

#### Available Documents

From the Congress—Pub. L. 95-604 Uranium Mill Tailings Radiation Control Act (UMTRCA).

House Report No. 95-2480, Pt. I, Committee on Interior and Insular Affairs.

House Report No. 95-1480, Pt. II, Committee on Interstate and Foreign Commerce.

From DOE—Phase II, Title I, Engineering Assessment of Inactive Uranium Mill Tailings (for various sites) by Ford, Bacon and Davis, Utah Inc.

From EPA/ORP-OANR-460-401 M Street, S.W., Washington, D.C. 20460; Federal Register notice, 44 FR 33433, June 11, 1979, "EPA Development of Standards for Uranium Mill Tailings and Uranium Report on Mining Wastes—Call for Information and Data."

From EPA/ORP-OANR-460-401 M Street, S.W., Washington, D.C. 20460; Federal Register notice, 44 FR 38664-38670, July 2, 1979, "EPA Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands—Radiation Protection Recommendations and Request for Comment."

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#### EPA-OANR

#### Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer

#### Legal Authority

The Clean Air Act, as amended, §§ 111, 112, and 301(a), 42 U.S.C. §§ 7411, 7412, and 7601(a).

#### Statement of Problem

Cancer is currently the second leading cause of death in the United States. One American in four is expected to contract some form of cancer in his or her lifetime, and one in five is expected to die from the disease. The most recent statistics show a continued increase in the total incidence of cancer, resulting

principally from increases in lung cancer.

Studies of human cancer rates and their worldwide geographical variations, and observations of incidence rates in migrant populations have revealed that factors in the human environment are probably responsible for a large proportion of cancers. "Environmental factors" must be understood in the broad sense to include chemical exposures from smoking, diet, occupation, drinking water, and air pollution; various forms of radiation, including sunlight; and some forms of severe physical irritation. Although the uncertainties are great, estimates by the World Health Organizations, other prominent institutions, and individual experts have suggested that these factors may cause 60 to 90 percent of all human cancers.

Although airborne carcinogens may induce cancer at a number of areas in the body, lung cancer is thought to be the principal form of cancer related to air pollution. While cigarette smoking is probably the most important cause of lung cancer in the United States, many scientists believe that various air pollutants increase the risk of cancer from smoking and other carcinogenic insults. Available estimates also indicate that occupational exposures are responsible for a significant portion of the incidence of lung cancer in the United States.

A preliminary examination by the Environmental Protection Agency (EPA) of chemical production, industries producing radioactive materials, and air sampling results has identified over 50 known or potential chemical carcinogens and numerous radioactive materials which may be emitted into the atmosphere. Many of these substances are synthetic organic chemicals that have been in commercial use only since the 1930's. Since cancer induced by exposures to small amounts of airborne carcinogens may not appear for 15 to 40 years after exposure, it is still too early to detect the full effects of these chemicals on human health. Thus, it is both prudent and, in view of the large number of people potentially affected, important to reduce or contain emissions of known or suspected atmospheric carcinogens in order to prevent future problems before they actually are observed.

We have, since 1971, listed three airborne carcinogens (asbestos, vinyl chloride, benzene) as hazardous pollutants under § 112, "National Emission Standards for Hazardous Air Pollutants," of the Clean Air Act. As required by § 112, we have developed and are continuing to develop emission

standards for significant sources of these pollutants. In addition, we are evaluating a number of other potentially carcinogenic substances to determine whether action under § 112 is appropriate. We have found our actions on airborne carcinogens to be hampered by the lack of a policy, developed with public participation, that would guide our use of § 112 to control airborne carcinogens.

Specifically, publicly-stated, legally binding policies and regulatory mechanisms are needed for: (1) determining the carcinogenicity and carcinogenic risks of air pollutants for regulatory purposes, (2) establishing priorities for evaluating the need for and implementing additional regulatory action, (3) specifying the degree of source control required in general under § 112 and how we will determine that level of control in setting individual standards, and (4) providing more extensive public involvement in the Agency's decisionmaking on the regulation of airborne carcinogens.

#### Alternatives Under Consideration

We describe a number of alternatives in the proposal document. Beyond that, the principal alternative is to have no formal policy. Under this alternative, EPA would continue with a case-by-case approach for regulating airborne carcinogens under § 112. This strategy would allow the Agency maximum regulatory flexibility, but would not give either the general public or the regulated industry sufficient information to enable them to participate fully in the rulemaking process. In addition, the alternative of no policy would not resolve the difficulties which EPA has encountered in the listing of airborne carcinogens and in the subsequent development of emission regulations. It also does not recognize the need for procedures to insure that available resources are allocated to the most important or tractable problems on a priority basis.

Under the policy, we will list under § 112 those airborne substances identified as high probability human carcinogens which present a significant carcinogenic risk to public health as a result of air emissions from one or more categories of stationary sources. Where applicable, we will propose generic standards concurrently with the listing, to expedite reductions in emissions which can be achieved through good housekeeping practices in the manufacturing, handling, or use of hazardous materials. We will use risk assessments to determine priorities for further regulation of significant source

categories and in the evaluation of residual risk.

At a minimum, the policy requires new and existing sources which present or would present significant risks to apply "best available technology" (BAT) to control emissions of listed airborne carcinogens. BAT for new sources represents the most advanced level of control adequately demonstrated, considering economic, energy, and environmental effects. For existing sources, the determination of BAT also considers the impacts and technological problems associated with the retrofitting of control equipment. Controls more stringent than BAT may be imposed if the risk remaining after the application of BAT is unreasonable, or, for new sources, if the criteria for risk avoidance associated with plant siting cannot be met.

#### Summary of Benefits

The proposed policy will significantly improve EPA's regulatory effort in identifying and controlling airborne carcinogens. Proposing generic standards for certain categories or sources concurrent with listing under § 112 will provide for significant reduction in emissions, pending the development of final § 112 standards. A mechanism for establishing regulatory priorities will insure that we address the most important or tractable problems first. The policy also provides for increased public understanding of and participation in EPA's actions and allows EPA to give earlier notice of its findings and regulatory intent to State and local regulatory authorities and to industries.

#### Summary of Costs

We intend the proposed rule only to guide the Agency in identifying and controlling airborne carcinogens. In its present form, we cannot assess its regulatory effects quantitatively. This policy will, however, provide a basis for impact assessments in subsequent regulatory actions that are taken in accord with its provisions.

#### Sectors Affected

Generic and emission standards that we develop for sources of airborne carcinogens under the proposed policy will reduce cancer risks for large segments of the U.S. population exposed to these substances in the ambient air. The greatest benefits will be to individuals who live in the immediate vicinity of characteristic source types.

Preliminary analyses have identified a number of source types which may emit carcinogenic substances into the atmosphere. Most of these types fall into

one of the following six broad groups: (1) mining, smelting, refining, manufacture and end-use of minerals and other inorganic chemicals; (2) combustion; (3) petroleum refining, distribution, and storage; (4) synthetic organic chemical industries and end-use applications and waste disposal; (5) mining, processing, use and disposal of radioactive substances and radioactive by-products; and (6) non-carcinogenic emissions which are chemically transformed into carcinogens in the atmosphere.

While low levels of potentially carcinogenic substances have been detected in many parts of the country, the areas of greatest concern are densely populated urban centers and areas with a high concentration of chemical manufacturing industries. In the latter case, geographic areas that are affected include the Gulf Coast (Louisiana and Texas), the Kanawha Valley (West Virginia), and Northern New Jersey.

The primary responsibility for implementing the policy will fall on the Office of Air, Noise, and Radiation, EPA. State and local air pollution agencies will have the opportunity to participate in the process at all stages. Some States may request delegation of authority in the area of new requirements for siting sources.

#### Related Regulations and Actions

Other offices within EPA are also in the process of developing programs to control carcinogens. These include the Office of Pesticides and Toxic Substances, the Office of Water and Waste Management, the Office of the Pesticide Programs, and the Office of Mobile Source Air Pollution Control. A program is also underway to develop an agency-wide cancer policy.

Related external efforts include the development of a national cancer policy by the member agencies of the United States Regulatory Council, the recent report by the Risk Assessment Work Group of the Interagency Regulatory Liaison Group (IRLG) on the identification of carcinogens and the quantitative assessment of risks; a staff paper by the White House Office of Science and Technology Policy on the identification, characterization, and control of potential human carcinogens; and a report to the President by the Interagency Toxic Substances Strategy Committee.

Other regulatory agencies that are involved in this area include the Occupational Safety and Health Administration, the Food and Drug Administration, and the Consumer Product Safety Commission. Non-

governmental groups who have expressed interest in or made recommendations on the control of carcinogens include the Environmental Defense Fund, the American Industrial Health Council, and the Natural Resources Defense Council.

#### Active Government Collaboration

In addition to the public meeting that EPA held in March 1978, the Agency has presented testimony at the public hearings held after the Occupational Safety and Health Administration proposed its carcinogen policy. We have also provided information briefings for the Interagency Regulatory Liaison Group and members of the President's Council on Environmental Quality and the Council on Wage and Price Stability, Congressional staff, and interested State air pollution agencies.

#### Timetable

Public Hearings—December 1980.

Final Rule—June 1980.

#### Available Documents

"Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer"—NPRM October 10, 1979, 44 FR 58642.

"National Emission Standards for Hazardous Air Pollutants—Generic Standards"—ANPRM October 10, 1979, 44 FR 58662.

"Summary of Responses and Proposals—Testimony and Written Submissions"—U.S. EPA Public Hearings on Regulation of Carcinogenic Air Pollutants, Washington, D.C., March 23, 1978.

These documents as well as others referenced in the proposed policy are available in a public rulemaking docket number OAQPS 79-14. The docket is open for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at: Central Docket Section, Room 2903B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

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## EPA-Office of Pesticides and Toxic Substances

### Pesticide Registration Guidelines

#### Legal Authority

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136a(c)(2)(A), 136f, 136w (1978).

#### Statement of Problem

With certain limited exceptions, the Environmental Protection Agency (EPA) must register all pesticides before manufacturers and formulators can legally distribute and sell them in the United States. In addition, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) expressly requires that currently registered pesticides be reregistered expeditiously; in many cases, the registrants of the pesticides will have to submit health and safety data that meets Guidelines requirements, because they had not previously submitted data or had submitted inadequate data.

EPA's Guidelines specify the health and safety data that registrants of different types of pesticide products must submit and the testing methods to be used in developing these data. We will issue separate subparts of the Guidelines for the different kinds of data required.

Prospective registrants (primarily manufacturers and formulators) are responsible for performing the testing and submitting results to the Agency. EPA uses the data in determining whether a pesticide will perform its intended function without causing unreasonable adverse effects on human health and the environment.

#### Alternatives Under Consideration

EPA is not considering alternatives to publication of the Guidelines. The Agency is analyzing public comments on the portions already proposed (See "Available Documents") and is considering alternative ways of modifying the data and testing requirements.

#### Summary of Benefits

The Guidelines will give prospective registrants the benefit of knowing precisely what kinds of data the Agency requires (though there are provisions for waiving some requirements under some circumstances). Manufacturers and formulators therefore will be able to plan their research and development programs with greater certainty. The Guidelines also can be expected to result in improvement in the quality of data available for EPA's decisionmaking on pesticide registrations.

#### Summary of Costs

EPA estimates that it will cost registrants approximately \$700 million over the next ten years to meet the Guidelines requirements as they are currently proposed. This estimate reflects the cost to manufacturers and formulators of providing additional data to support reregistration of the major pesticides currently registered for agricultural uses and the cost of providing data to support registration of new pesticides. The estimate applies to those portions of the Guidelines that we have already published as proposed rules. (See "Available Documents.")

The projected cost represents expenditures for conducting laboratory testing, and we expect it to contribute to the growth of the toxicological testing industry. While registrants will initially bear the cost, we expect that the cost will be passed on to pesticide users, resulting in relatively small price increases. EPA does not expect any significant effect on employment in the pesticide industry, or any other nationally significant economic effects, although producers of some pesticides of small economic significance may withdraw them from the market.

#### Sectors Affected

The Guidelines will affect the manufacturing sector, principally chemical manufacturing, and the food and agriculture sector (which is the major user of pesticides).

#### Related Regulations and Actions

*Internal:* EPA also is developing testing standards for chemical substances and mixtures under the Toxic Substances Control Act (TSCA). As far as possible, EPA will make the pesticide testing methods prescribed by the Guidelines consistent with the TSCA testing standards. The Good Laboratory Practice Standards being developed under TSCA and FIFRA, which prescribe uniform standards of performance for toxicological testing, will also be consistent with the Guidelines.

*External:* Under the aegis of the Interagency Regulatory Liaison Group (IRLG), EPA, the Food and Drug Administration, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission are jointly developing guidelines describing test methods that will meet all four agencies' needs.

#### Active Government Collaboration

Agencies that we have consulted include the members of the Interagency Regulatory Liaison Group (IRLG), the

National Cancer Institute, and the Department of Agriculture.

#### Timetable

Those portions of the Guidelines already published as NPRM (see below) are scheduled to be issued as final rules between November 1979 and November 1980. Additional portions dealing with label development, applicability of data requirements, and reentry data requirements are scheduled to be published as NPRM between December 1979 and June 1980.

#### Available Documents

We have published the following portions of the Guidelines as NPRM:

Subpart B—Introduction, 43 FR 29696, July 10, 1978.

Subpart C—Registration Procedures (interim final), 40 FR 41788, September 9, 1975.

Subpart D—Chemistry Requirements, 43 FR 29696, July 10, 1978.

Subpart E—Hazard Evaluation: Wildlife and Aquatic Organisms, 43 FR 29696, July 10, 1978.

Subpart F—Hazard Evaluation: Humans and Domestic Animals, 43 FR 37336, August 22, 1978.

Also available is: "Economic Impact Analysis of Guidelines for Registering Pesticides in the U.S.," 43 FR 39644, September 6, 1978.

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#### EPA-OPTS

Rules and notice forms for premanufacture notification of new chemical substances

#### Legal Authority

Toxic Substances Control Act (TSCA), § 5, 15 U.S.C., § 2604.

#### Statement of Problem

To prevent public health risks and environmental contamination before potentially toxic substances are widely used and dispersed, Congress included a section on premanufacture notification in the Toxic Substances Control Act (TSCA). This section requires a manufacturer to notify the Environmental Protection Agency (EPA) of his intent to manufacture or import a new chemical substance, and to submit information concerning that substance which the Agency can use to assess the risks associated with its manufacture,

processing, distribution in commerce, use, or disposal. On the basis of this assessment and an evaluation of economic considerations and other relevant factors, EPA will make decisions concerning the reasonableness of any risk, and will take appropriate action to obtain more information or data, to regulate production or use, or to require reporting once the substance is in commerce. If EPA does not regulate the substance during the premanufacture notification period, the manufacturer may begin production (subject to regulation under any other laws).

To implement the notification process, EPA proposed a set of premanufacture notification rules and forms for public comment on January 10, 1979. In September, EPA repropoed the forms and certain portions of the rule. The rules, when final, will clarify for manufacturers (including importers) of new chemical substances their statutory obligations to provide information on the substances, which information they must supply and which is optional, and the Agency's procedures for reviewing the information. The forms will provide a detailed specification of the information they must submit and the formats in which they should supply the information. The manufacturers are responsible for assembling the information. EPA must decide, generally within 90 days of receiving the information, whether the substance in question presents an unreasonable risk to human health or the environment, and if so, what action to take.

#### Alternatives Under Consideration

There are several significant issues to be resolved in this rulemaking. Among them are the scope of information to be required and the level of detail; when premanufacture notifications are to be submitted to EPA; policies regarding the confidentiality of the information submitted; the extent to which the submitter must contact prospective customers to obtain relevant data; and whether and how EPA may declare notifications deficient or invalid. Based on the public comments on the rules and forms we published as an NPRM (See "Available Documents") and on a revised, shortened form we also published as an NPRM (See "Available Documents"), the Agency is considering various alternative ways of resolving these and other significant policy issues. In general, the Agency's objective is to strike a reasonable balance between its needs for information to permit evaluation of new chemicals and the chemical industry's legitimate interests in developing and manufacturing new

chemicals and protecting proprietary data.

#### Summary of Benefits

The premanufacture review process will benefit public health and the environment by preventing the production, use, or disposal of new chemicals which present unreasonable risks. By preventing potential hazards at an early stage, EPA can minimize economic dislocation compared to the economic dislocation that regulation could cause after a chemical is in full production and use. For example, adverse employment effects and the obsolescence of plant equipment will be substantially reduced by early regulation. Preventing toxic chemicals from entering the environment also will decrease lost work days and hospitalization costs that result from worker exposure to toxic chemicals.

#### Summary of Costs

EPA is conducting an in-depth study of the premanufacture notification requirements in order to determine with a greater degree of confidence the nature of the costs and economic effects of this rulemaking. This economic study will assess the primary costs and effects of the notice form and the secondary effects of the rulemaking. These secondary effects will include the effect on research and development programs; industry sales, growth and profitability; and the structure of the chemical industry. EPA will use the results of this study in making final decisions on how to implement the premanufacture notification program.

#### Sectors Affected

Premanufacture notification rules and forms will have their primary effects upon the manufacturing sector, and principally upon chemical manufacturers and importers. Under TSCA, manufacturers are distinguished from processors; the latter may be requested to provide information to EPA, either directly or through the primary manufacturers, but are under no legal obligation to do so.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

Other Federal agencies that have involved in this rulemaking include the Consumer Product Safety Commission, the Occupational Safety and Health Administration, the Food and Drug Administration, the Department of Transportation, and the Bureau of the Census.

#### Timetable

Final Rule—March 1980.

#### Available Documents

NPRM for Premanufacture Notification Requirements and Review Procedures—44 FR 2242, January 10, 1979.

Discussion of Premanufacture Testing Policy and Technical Issues—44 FR 16240, March 16, 1979.

Interim Policy Statement—44 28558, May 15, 1979.

NPRM for Rules and Other Issues—44 FR 59764, October 16, 1979.

These documents are available from the Agency contact listed below.

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#### EPA—OPTS

Rules restricting the commercial and industrial use of asbestos fibers

#### Legal Authority

Toxic Substances Control Act, 15 U.S.C. § 2605

#### Statement of Problem

The Environmental Protection Agency (EPA) is concerned that many uses of asbestos may present an unreasonable human health risk. Exposure to asbestos fibers has been shown to contribute to increased risk of lung damage (asbestosis) and cancer of several anatomic sites in humans.

Asbestos is a generic name for several naturally occurring mineral fibers. Since the beginning of the century, approximately 30 million tons of asbestos fibers have been used in the United States to produce thousands of commercial and industrial products. The inventory of asbestos products is growing, since new products introduced into commerce represent about 750,000 tons of asbestos per year. Some fibers used in these products are inevitably released as a result of fiber processing, product manufacturing, distribution in commerce, product use, and disposal. Much of this asbestos remains in the biosphere as a ubiquitous pollutant because of the fibers' mobility and resistance to chemical and physical decomposition. Humans may be exposed to these fibers from these direct and indirect sources.

Various Federal and State authorities control certain exposures to asbestos. However, because of limited mandates (i.e., focused on specific populations or

exposure sources), technical difficulties (e.g., available fiber measurement techniques), and other analytical constraints, these authorities are not able to deal with the total asbestos problem. As a result, many population segments remain exposed to, and inadequately protected from, both direct and diffuse sources of asbestos.

Under the Toxic Substances Control Act (TSCA), EPA expects to promulgate rules which will reduce and prevent human health risk from sources which are difficult to control through media-specific (e.g., air, drinking water) or source-specific (e.g., mining) regulation authorized under other Federal statutes.

#### Alternatives Under Consideration

EPA is planning to promulgate rules to control the commercial and industrial use of asbestos under TSCA. The principal alternatives we are considering are: (1) not developing rules, (2) promulgating additional rules under other Federal authorities, and (3) promulgating information gathering rules and deferring a decision on rules for control until we have evaluated the information that is submitted.

With respect to promulgation of rules under TSCA, EPA is considering three alternative approaches.

First, the Agency might promulgate prohibitions on the manufacture, processing, and use of specific asbestos-containing products or product categories.

One disadvantage of this approach stems from the demand for asbestos fiber, which reportedly exceeds current supplies. If this situation persists, fibers originally destined for a banned product might be transferred to increase production of unrestricted products. Such a transfer could offset the reduction in asbestos use anticipated under the product use ban. The situation would only change after a large number of asbestos-containing products and uses were banned.

Another disadvantage of the specific product restriction approach is that it could generate voluminous exemption requests. Although well defined exemption criteria could minimize the number of requests, the demand on EPA resources could be significant. Despite these drawbacks, this option should still enable EPA to reduce and prevent the unreasonable risks that are associated with many asbestos products.

Under the second approach, EPA could promulgate regulations setting limits on the amount of asbestos mined in the United States and imported annually. Alternatively, the regulation could restrict the amount of asbestos processed annually in the United States.

The net risk reduction and prevention from either alternative should be about the same. In selecting between them, EPA would consider such factors as economic impacts and the resources necessary for enforcement.

In essence, the second approach would establish a ceiling on the amount of asbestos used in the United States. This approach would allow industry to determine which products and uses to eliminate. EPA would still be assured of reduction in asbestos use and environmental build-up. The disadvantage of this approach is that there is no guarantee of eliminating products which present a particularly high risk. For example, if a product with easily released fibers commands a relatively high price, it might remain in the marketplace much longer than if it was regulated specifically.

Under the third approach, the Agency might select a combination of the preceding approaches to take maximum advantage of their desirable features. The key differences between the two approaches are (1) whether EPA or industry determines which products to eliminate, and (2) whether specific products or the overall quantity of asbestos fibers are regulated. One example of a combined approach might be reducing the initially established ceiling limit annually by 5 to 20 percent until an appropriate level is reached where all remaining fiber use is essential. In conjunction with the production/import rule, EPA might also ban a few selected products to ensure speedy elimination of items or uses presenting particularly significant risks.

All regulations the Agency develops under any of these approaches will be designed to minimize adverse effects on the asbestos industry and asbestos users. To this end, the development of implementation schedules will allow for reasonable transitions to substitutes and orderly phase-out of asbestos processing equipment.

#### Summary of Benefits

At this stage of development of the regulation it is impossible to estimate benefits in quantitative terms; however the regulation should decrease the incidence of asbestosis and lung cancer in the United States, thus decreasing the number of worker days lost due to worker sickness, increasing space available in hospitals, and decreasing costs due to morbidity and hastened mortality.

Producers of materials which can be substituted for asbestos may experience increases in demand for their products, therefore they may benefit from EPA regulation of asbestos.

#### Summary of Costs

Because we have not yet completed the analysis of economic effects, cost estimates are not available. However, should the use of asbestos fibers be restricted, industries which mine and mill asbestos and conduct primary processing would probably lose income. Some employment loss may occur in these industries. Other industries which use asbestos may incur increased costs because of the need to use more expensive substitute products and materials.

#### Sectors Affected

The sectors affected would vary greatly depending on the type of regulatory controls that we choose. Because EPA has not yet decided what the proposed rule will be, it is too early to estimate which markets, populations, regions, or levels of government a regulation on asbestos use would affect most. However, all regulations would probably affect domestic mines, mills, and primary processors of asbestos.

#### Related Regulations and Actions

EPA and the Consumers Product Safety Commission (CPSC) both published ANPRM's on October 17, 1979 in the Federal Register (44 FR 60056). These ANPRM's were prefaced by a joint statement of cooperation signed by the Administrator of the Environmental Protection Agency and the CPSC Chairman. The statement indicated how the two agencies will cooperate and direct their regulatory efforts to minimize reporting requirements and other burdens on industry and to improve overall public health.

*Internal:* EPA has established National Emission Standards for Hazardous Air Pollutants (NESHAP) for several asbestos sources under the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, (These standards included certain work practice requirements which the United States Supreme Court in *Adamo v. Train*, 98 S. Ct. 566 (1978), found to be valid.) Congress amended the Clean Air Act in 1977 and 1978 to provide EPA with the authority to prescribe and enforce such work practice standards. Therefore, EPA will again promulgate these standards and is considering additional asbestos air emission standards. EPA is developing effluent guidelines regulating wastewater discharges of asbestos under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, as amended in 1972 and 1977. It is also considering additional regulation of asbestos in drinking water under the Safe Drinking Water Act, 42 U.S.C. § 3008 *et seq.*

The Agency is investigating the development of a rule to require surveys to determine whether asbestos hazards are present in public schools because of deteriorating insulation. The Agency will also consider requiring appropriate corrective measures where it finds hazards. We have published an ANPRM in the Federal Register describing this action (44 FR 54676). Other existing sources that the Agency may control in the future include public buildings where asbestos was used as an insulation or decorative material and merchant ships where asbestos is widely used as insulation.

In support of the investigation of asbestos products and uses, EPA expects to issue a reporting rule under § 8(a) of TSCA to gather economic and exposure information. The Agency also anticipates a rule under § 8(d) of TSCA to require industry to submit unpublished health and safety studies relating to asbestos. Finally, EPA will consider the need for supplementary regulation under other Federal laws that EPA and other Federal agencies administer.

**External:** A number of rules for controlling exposure to asbestos have been promulgated under several Federal laws.

The Occupational Safety and Health Administration (OSHA) and the Mining Safety and Health Administration (MSHA) regulate workplace exposures; the Department of Transportation (DOT) regulates the commercial transport of asbestos; the Food and Drug Administration (FDA) regulates the use of asbestos by the food and drug industries; and the Consumer Product Safety Commission (CPSC) regulates consumer products containing asbestos.

#### Active Government Collaboration

To maximize the effectiveness of this proposed rule, EPA is coordinating with several agencies, both directly and through the Interagency Regulatory Liaison Group (IRLG). These agencies include the Food and Drug Administration, Consumer Product Safety Commission, Department of Agriculture, Mine Safety and Health Administration, and Occupational Safety and Health Administration.

#### Timetable

- ANPRM—spring 1980.
- Public Comment—90 days following ANPRM.
- Public Hearings—during public comment period.
- Final Rule—late 1980.
- Final Rule effective—early 1980's, possibly staggered, depending on the scope of the rule.

EPA will probably be required to prepare a regulatory analysis. However, regardless of whether it is actually required, an analysis of this type will generally be prepared as part of the technical support document for any rules we develop.

#### Available Documents

ANPRM for Asbestos-Containing Materials in School Buildings—44 FR 54676, September 20, 1979. Commercial and Industrial Use of Asbestos Fibers will be announced in the Federal Register. ANPRM for Commercial and Industrial Use of Asbestos Fibers, 44 FR 60056, October 17, 1979.

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#### EPA—OPTS Standards and rules for testing of chemical substances and mixtures

#### Legal Authority

Toxic Substances Control Act (TSCA),  
15 U.S.C. § 2603.

#### Statement of Problem

Section 4 of TSCA gives the Environmental Protection Agency (EPA) the authority to require manufacturers and/or processors to test the chemicals they manufacture or process for possible adverse effects on human health or the environment. Adequate test data are currently available for very few of the more than 45,000 chemical substances in commerce (as defined by TSCA), yet the potential risks of this multitude of chemicals generally cannot be estimated without this type of data.

To implement § 4, we are in the process of developing, proposing, and promulgating test standards and test rules. A test standard is a description of the methodology and analysis to be used in testing for an effect. A test rule is a regulation requiring specific chemicals to be tested for certain effects by the appropriate test standards.

For the most part, chemicals included in test rules will come from the semi-annual recommendations made by the Interagency Testing Committee (ITC). The ITC was established by § 4(e) of TSCA to recommend chemicals to EPA for priority consideration for testing by industry under § 4(a).

Section 4(e) mandates eight organizations to provide a single ITC member each. These organizations are: EPA, Occupational Safety and Health

Administration, Council on Environmental Quality, National Institute for Occupational Safety and Health, National Institute of Environmental Health Sciences, National Cancer Institute, National Science Foundation, and Department of Commerce. The ITC uses a systematic process to identify chemicals and categories of chemicals with the highest priority for testing and recommends specific types of testing (e.g., carcinogenicity, chronic toxicity, environmental effects) and testing methods (e.g., epidemiology) for each chemical or category it identifies. Within twelve months of receiving recommendations from the ITC, we must either initiate rulemaking to require the testing the ITC recommended or publish reasons for not doing so. In addition, the Natural Resources Defense Council has sued us for alleged failure to respond adequately within the statutory time frame for the 18 chemicals/groups that the first two ITC reports designated.

#### Alternatives Under Consideration

We could rely on testing that the chemical industry performs voluntarily, but there is no assurance that they would test the chemical substances and mixtures that are potentially the most hazardous, or that such testing would be adequate to provide the kinds of information we need to assess risk. In addition, we have no assurance that they would do the testing as expeditiously as possible.

Another alternative is to conduct testing in governmental facilities or under contract to the government. We will take this approach where it would be inappropriate or infeasible to require testing by the chemical industry, but exclusive reliance on this approach would be in direct conflict with TSCA, which states that the development of data on health and environmental effects "should be the responsibility of those who manufacture and those who process chemical substances and mixtures."

In developing testing standards, we will consider alternative methodologies, taking into account their relative scientific validity and efficacy, as well as relative costs. Where possible we will develop hierarchical testing schemes in which we will consider the results of relatively inexpensive short-term tests, together with other relevant factors, such as potential exposure, in determining whether long-term testing is necessary.

In selecting chemicals to be tested, we will consider the likelihood of adverse effects, the extent of human and/or environmental exposure, economic

effects, and the availability of qualified personnel and facilities.

#### Summary of Benefits

We expect that testing standards and rules will identify the possible human and environmental hazards of many of the chemical substances and mixtures now in use and will increase the number of new chemicals that undergo adequate testing before they are introduced. Given adequate knowledge of potential adverse effects, we will be able to make better decisions on the need to control human and environmental exposure to chemical substances and mixtures. The result should be greater protection of the public against risks associated with chemicals.

#### Summary of Costs

We are still in the initial stages of developing a testing program under TSCA. Thus far, we have issued no testing rules. It therefore is too early to make any quantitative estimates of economic effects. EPA recognizes that testing, especially lifetime testing in laboratory animals, can be expensive and time-consuming. We will develop estimates of economic effects, including the effects on prices and profitability of chemicals, and on innovation in the chemical industry, and make them available when we propose the testing rules.

#### Sectors Affected

Testing standards and rules will affect the manufacturing sector, principally chemical manufacturers. Under TSCA, chemical manufacturing includes importing. Also, the Act distinguishes between chemical manufacturers and processors and specifies that both are subject to the requirements for testing. Whether we will require manufacturers and/or processors to test the effects of a specific chemical will depend on the stage of the "life cycle" of that chemical for which testing is needed.

#### Related Regulations and Actions

*Internal:* We have proposed Pesticide Registration Guidelines specifying testing requirements for pesticides. These guidelines and the TSCA testing standards are conceptually the same and will be as consistent as possible. We are also developing testing standards for the registration of fuels and fuel additives and for the control of hazardous wastes; they will be as consistent as possible with the TSCA testing standards.

*External:* The Food and Drug Administration (FDA) issued Good Laboratory Practice (GLP) standards for testing drug toxicity; the proposed TSCA

GLP standards are consistent with FDA's. Under the aegis of the Interagency Regulatory Liaison Group, EPA, FDA, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission are jointly developing guidelines describing test methods that will meet all four agencies' needs.

#### Active Government Collaboration

Other Federal agencies that have been or will be consulted include the Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, National Cancer Institute, and National Institute of Environmental Health Sciences.

#### Timetable

NPRM—January 1980.

NPRM—June 1980.

NPRM—October 1980.

These NPRM's will each concern a different set of chemicals.

#### Available Documents

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules, 44 FR 27334, May 9, 1979. A Support Document which provides the scientific bases for the test standards and discussions related to economic and confidentiality issues is available upon request from the Industry Assistance Office, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules, 44 FR 44054, July 26, 1979.

The Interagency Testing Committee established under TSCA has issued four reports making recommendations on chemicals to be covered by TSCA testing rules:

Initial Report: 42 FR 55026, October 12, 1977.

Second Report: 43 FR 16684, April 19, 1978.

Third Report: 43 FR 50630, October 30, 1978.

Fourth Report: 44 FR 31866, June 1, 1979.

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#### EPA—Office of Water and Waste Management

#### EPA control of organic chemicals in drinking water

#### Legal Authority

The Safe Drinking Water Act as amended § 1412, 42 U.S.C. § 300(f) *et seq.*

#### Statement of Problem

Measures toward the control of organic chemicals in drinking water are proceeding through two related approaches:

I. Control of Trihalomethanes in Drinking Water—Final Rule, November 1979.

II. Treatment Technique Requirement for the Control of Synthetic Organic Chemicals—to be repropose, early 1980.

Synthetic organic chemicals are industrially-derived chemicals which enter sources of drinking water as a result of industrial discharges, spills, and urban and rural rainwater run-off (non-point sources). Some of these organic chemicals are either known or suspected carcinogens. The list of synthetic organic chemical contaminants that have been found at least once in drinking water has grown to over 900. Because of the technical infeasibility of controlling every synthetic organic contaminant individually by setting a Maximum Contaminant Level (MCL), EPA has determined that control of a broad spectrum of organic chemicals by a treatment technique (granular activated carbon) is appropriate. The intent of these regulations is to improve the quality of drinking water at the tap and reduce the health risk to the public from long-term exposures to synthetic organic chemicals in drinking water. This proposal will amend EPA's National Interim Primary Drinking Water Regulations, or equivalent regulations adopted by the States, which apply to all public water systems in the United States.

#### Alternatives Under Consideration

The alternatives being considered include requirements for community water systems to install granular activated carbon treatment (GAC) or its equivalent if they serve more than 10,000 people and use sources of drinking water which are vulnerable to contamination by synthetic organic chemicals. The repropose regulations will consider changes in the application of the GAC technology, in that the GAC

requirement could be achieved by replacing sand with GAC in existing filter beds, and we will specify the frequency of reactivation (removal of adsorbed organic chemicals from the GAC) of the GAC in the regulations. Frequencies for reactivation of the GAC under consideration are six months to one year.

Since the proposal, we have re-evaluated criteria for determining which public water systems are vulnerable to contamination by synthetic organic chemicals, and the repropoed regulations may specify rivers or stream segments that we consider to be subject to contamination by synthetic organic chemicals. We would choose these water sources based on an evaluation of the number and type of industrial/municipal discharges upstream of drinking water intakes, an estimate of the transportation of industrial and agricultural chemicals on the waterway, and the potential contamination by non-point sources.

#### Summary of Benefits

The treatment technique for the control of synthetic organic contaminants as repropoed will provide protection to a larger population at a lower per capita cost than would the original proposal. The technique provides broad spectrum protection from synthetic organic contaminants and could be implemented two to three years earlier than the original proposal.

#### Summary of Costs

We estimate the total national capital costs of implementing this proposal to be \$333 million in 1980 dollars over three years. We project that local water rates will increase by about \$5 per year per family of three in the approximately 150 metropolitan communities that will have to install GAC facilities. Installing GAC treatment systems will cause considerable growth in construction, analytical services, and consulting engineering industries. The demand for trained operators for water plants, analytical chemists, and sanitary engineers will increase in proportion to the number of water systems which install new treatment facilities.

#### Sectors Affected

The proposed regulations will affect local and state governments and public water systems, including both municipal and privately-owned systems. It will also affect manufacturers of GAC, manufacturers of the furnaces used to reactivate spent carbon, analytical laboratories, and laboratory equipment manufacturers.

#### Related Regulations and Actions

*Internal:* All EPA regulations that affect control of chemical contamination of water would be indirectly related, including: Effluent Guidelines, National Pollution Discharge Elimination System, and Water Quality Criteria.

*External:* State programs would expand to deal with decisions on variances and exemptions from the regulations, and to provide technical assistance to public water systems making changes in their treatment processes.

#### Active Government Collaboration

Supporting documentation for the health basis of the proposed regulation requires information-sharing with the National Cancer Institute, National Institute of Environmental Health Sciences, Consumer Products Safety Commission, Occupational Safety and Health Administration, and the Food and Drug Administration. Also, we have gained data supporting development of vulnerability criteria through cooperation with the U.S. Coast Guard, U.S. Department of Transportation, and the U.S. Department of Commerce.

#### Timetable

Repropoed NPRM—early 1980.  
Final Rule—late 1980.

#### Available Documents

ANPRM—41 FR 28991, July 14, 1976  
"Drinking Water and Health," National Academy of Sciences, 1977.

"National Organics Reconnaissance Survey," EPA, Municipal Environmental Research Laboratory, 1975.

"National Organics Monitoring Survey," EPA, Office of Drinking Water.

"Statement of Basis and Purpose for an Amendment to the National Interim Primary Drinking Water Regulations on a Treatment Technique for Synthetic Organic Chemicals," EPA, Office of Drinking Water, 1977.

"Economic Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1977.

"Draft Interim Treatment Guide for the Control of Synthetic-Organic Contaminants in Drinking Water Using Granular Activated Carbon," EPA, Municipal Environmental Research Laboratory, 1978.

"Revised Economic Impact Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1978.

"Operational Aspects of Granular Activated Carbon Absorption Treatment," EPA Municipal Environmental Research Laboratory, 1978.

NPPM—43 FR 5766, February 9, 1978.  
National Academy of Sciences Study on Granular Activated Carbon, 1979.

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#### EPA-OWWM

Hazardous waste regulations: core regulations to control hazardous solid waste from generation to final disposal

#### Legal Authority

Resource Conservation and Recovery Act of 1976, as amended, § 3001, § 3002 and § 3004, 42 U.S.C. § 6921, § 6922, and § 6924.

#### Statement of Problem

The Environmental Protection Agency estimates that more than 34.4 million metric tons of hazardous waste are generated annually in the United States. Hazardous waste includes toxic chemicals, pesticides, acids, caustics, flammables and explosives. Of this hazardous waste, EPA estimates that 90 percent is managed by practices that will not meet the proposed new Federal standards. A variety of health and environmental damages result from improper management practices. The most frequent are direct contact with toxic waste, fire and explosions, groundwater contamination by leachate, surface water contamination through runoff or overflow, air pollution by open burning, evaporation and wind erosion, and poisoning through the food chain. The amount of hazardous waste will increase by 30 percent in the next decade, primarily because other environmental laws have curtailed emissions into the air, waterways, and oceans.

EPA has information on more than 400 cases of damage to human health or the environment due to improper hazardous waste management. One such case, Love Canal in Niagara Falls, New York, resulted in the evacuation of 239 local families at relocation costs of approximately \$10 million, projected cleanup costs of over \$30 million, and health problems, including possible increases in birth defects, miscarriages, and hepatic and respiratory disorders. With as many as 30,000 hazardous waste disposal sites posing potential public health and environmental threats, hundreds of millions of dollars in

damages and remedial costs could result if the problem is left unattended.

#### Alternatives Under Consideration

A number of alternatives were studied prior to proposed rulemaking and, as a result of public comment and new information, during development of the final regulations. We are considering a number of significant changes to the regulations that may require reproposal or partial reproposal of major portions of the § 3001 and 3004 rules. EPA will discuss, in detail, in the preamble to the final rules, the alternatives considered and the reasons for their selection or rejection.

The proposed regulations provide two mechanisms for determining if a waste is hazardous: (1) a set of characteristics; and (2) a list of specific wastes. The proposed regulations include four (ignitable, corrosive, reactive, and toxic) of eight characteristics originally considered. Because test methods are not fully developed or validated for the other four characteristics (radioactive, infectious, phytotoxic, and teratogenic and mutagenic), these characteristics were excluded.

The proposed regulations exclude hazardous waste generated by households, farmers, retail establishments, and persons who generate less than 100 kilograms per month. This exclusion is based on the assumption that small amounts of hazardous waste will be disposed of in land disposal facilities approved under Subtitle D of the Resource Conservation and Recovery Act and, therefore, will not pose a hazard to human health or the environment. Increasing or decreasing the size of the small generator exemption is receiving consideration before promulgation of the regulations.

In addition to defining more or less waste as hazardous and determining the appropriate level for a small generator exemption from regulation, the overall scope of the regulations is affected by defining more or fewer waste as "special wastes." The special waste category, as proposed, defers most treatment, storage, and disposal standards for certain wastes of high volume but low hazard. Wastes produced by utilities, mining, oil and gas drilling, and cement kiln operations are currently classified as special wastes for which the proposed control technologies in the regulations are considered impractical. Each of the special wastes will be studied separately prior to proposal of technical standards.

Varying the criteria and increasing or decreasing the number of designated special wastes remain as regulatory

choices. In addition, candidate special wastes may be altered as the result of proposed Congressional amendments to the pending RCRA reauthorization bills. Amendments offered to the House version of the bill would exclude oil and gas drilling muds and brines from coverage by the RCRA Subtitle C regulations pending Congressional review of EPA's regulatory recommendations after additional studies. A proposed amendment in the Senate would not allow any new Federal regulation of these wastes for at least 24 months and only then with a Congressional resolution approving the regulation of oil and gas drilling muds and brines.

Time-phasing the implementation of the regulations could help reduce the potential burden on environmentally acceptable disposal sites. Disposal capacity is currently limited and generators may be unable to find adequate disposal facilities. Public opposition to siting may delay the development of additional landfill capacity. The phasing approach could help assure that the most serious environment problems are addressed first if a degree of hazard approach is used. All alternatives under consideration are designed to make efficient use of limited disposal capacity.

Delineating degrees of hazard is difficult, and was not reflected in the proposed waste classification regulations. A risk-oriented hazard system for regulations affecting treatment, storage, and disposal facilities could tailor design and operating standards to correspond to the character and hazard of the wastes. However, the risk of a particular waste in a particular location depends as much on the management situation as on the inherent hazard of the waste. Myriad combinations of wastes, site-specific designs, and operating conditions make regulation based on the approach extremely difficult and presumptive. The regulations, as proposed, reflect the similar management needs of most hazardous wastes. They establish standards for each of the several methods of disposing, treating, and storing hazardous waste (landfilling, application to the land, treatment in surface impoundments such as holding or aeration ponds, and incineration), that do not vary according to the waste.

The proposed treatment, storage, and disposal standards are applicable to all facilities that handle hazardous wastes. Phased facility permitting and notes and variances included in the proposed regulations offer alternatives for

accommodating difficulties associated with retrofitting existing facilities.

A Congressional amendment to the RCRA reauthorization bill may exempt all or existing surface impoundments from regulatory control if certain environmental safeguards are demonstrated. Such conditioned exemption could be extended to other existing disposal facilities or siting requirements could be temporarily waived or changed to ease the regulation's burden on existing facilities.

Another choice is to design alternative standards for future facilities, currently operating facilities, and facilities under construction. This would improve facilities in existence or close to start-up. There would be more rigorous standards for facilities on which work has not started.

EPA is considering potentially significant changes to the RCRA 3004 technical standards. One option is to promulgate the full set of technical, financial, and administrative requirements contained in the proposed regulations for treaters, storers, and disposers of hazardous waste. EPA will, at a minimum, finalize the "interim status standards" under § 3004. Under "interim status standards owners and operators of treatment, storage, and disposal facilities would have to begin properly storing wastes and meeting administrative standards for security, recordkeeping, reporting, visual inspection, training of personnel, contingency plans, closure, and financial responsibility.

The proposed technical standards for hazardous waste facilities are based primarily on design and operating standards intended to achieve complete containment or destruction of the waste. These are backed up by ambient air, water, and groundwater performance requirements in the event the specified designs do not achieve expected levels of health and environmental protection. Alternatives to this combined approach include ambient standards for air and water quality and other relevant parameters, performance standards, and a system based on EPA's application of "Best Engineering Judgment" for permitting individual treatment, storage, and disposal facilities. If this latter approach were adopted by EPA, either prior to or as an alternative to design and operating standards, judgment factors, a decision model, and/or design and operating guidance would be needed to facilitate application of Best Engineering Judgment to each permit case.

The paperwork and reporting requirements of Subtitle C of RCRA include recordkeeping to identify the

source, quantities, constituents, and disposition of hazardous wastes; a manifest system for generators, transporters, and facility owners or operators to track movement of hazardous waste; and reporting to EPA by generators on quantities and disposition of their hazardous waste and also by treatment, storage, and disposal facilities indicating compliance with the manifest system. EPA is attempting to minimize the paperwork burden on public and private sectors while still satisfying the information needs of the hazardous waste program. Alternative requirements regarding the amount and specificity of information; the retention period for records; the frequency of reporting; the number of copies and recipients; consolidation of the manifest with the Department of Transportation's hazardous materials shipping paper and bill of lading; and multiple-purpose manifest forms are under examination in order to prepare the least burdensome package.

#### Summary of Benefits

By issuing these regulations, the EPA is creating a framework for the control of hazardous wastes which would otherwise contaminate groundwater, surface waters, and soils, poison humans and animals, and cause air pollution, fires, and explosions. These regulations will require proper hazardous waste management that will reduce the incidence of damage to human health and the environment and save hundreds of millions of dollars in the costs associated with clean-up, emergency response, and health and environmental damages.

Comprehensive regulatory controls over the generation, movement, storage, and treatment of hazardous wastes may also help reduce opposition to the siting of hazardous waste management facilities. Overcoming the barrier of local opposition will allow siting of management facilities at environmentally secure sites and further reduce the possibility of damages to health and the environment.

The three proposed hazardous waste regulations are part of a series of seven required by Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) to initiate a national hazardous waste management program.

RCRA required that EPA promulgate the hazardous waste regulations within 18 months of enactment of the law (by April, 1978). EPA did not meet this deadline because of the enormous complexity of the task. After environmental organizations and the State of Illinois sued EPA in late 1978 for failure to promulgate the regulations by

the dates specified in RCRA, the U.S. District Court approved EPA's proposed schedule for development of the Subtitle C regulations by December, 1979. However, the number of public comments received, the amount of supporting data and documentation needed, and the complexity of the technical and policy issues are forcing some delay beyond the December date.

#### Summary of Costs

The estimated annual costs attributed to the RCRA Section 3001, 3002, and 3004 proposed regulations are \$3 million, \$16 million, and \$570 million, respectively. The costs of these three regulations will comprise the majority of the costs for the set of seven RCRA hazardous waste regulations. The total annual incremental cost of compliance with the proposed hazardous waste regulations is estimated at \$630 million (in 1977 dollars). Of the \$630 million, \$120 million is associated with post-closure liability requirements, \$260 million is attributable to building and operating waste management facilities, and \$14 million is associated with recordkeeping and reporting. Monitoring and testing, administration, training, and contingency planning account for the remaining \$236 million. The total cost represents approximately 1/2 of one percent of the annual value of the affected industries' production. The affected industrial segments will probably pass on the increased costs to the public, resulting in a nominal increase in prices of selected consumer items.

Industries which presently dispose of hazardous waste at their own facilities may begin to ship their waste to off-site facilities rather than incur the costs of upgrading their disposal facilities to comply with the regulations. This is likely to cause a short-run shortage of disposal capacity, which will increase demand for new sites. This capacity shortage and rigorous standards for facilities may result in a nominal increase in the cost of disposal.

The governmental costs associated with the implementation and maintenance of the hazardous waste management program are estimated at \$20 to \$35 million per annum. We currently estimate that 37-41 states and territories will assume the program while EPA operates a Federal program in the remaining 15-18.

#### Sectors Affected

Although these regulations affect most industries throughout the country, the manufacturing industries most affected by the proposed regulations are textile mill products, inorganic chemicals,

plastics, pharmaceuticals, paints, organic chemicals, explosives, pesticides, petroleum refining and re-refining, rubber products, leather tanning and finishing, metal smelting and refinishing, electroplating and metal finishing, special machinery manufacturing, electronic components, and batteries. Eight sectors are likely to experience some plant closures and job losses. These sectors include electroplating, wool fabric dyeing and finishing, mercury cell chlorine, leather finishing, mercury smelting and refining, and secondary copper, secondary lead and secondary aluminum smelting.

The regulations will also affect the public and private hazardous waste management industry. In all, some 380,000 generators, transporters, treaters, storers and disposers of hazardous wastes will be brought into the regulatory program.

Because the states of Texas, Ohio, Pennsylvania, Louisiana, Michigan, Indiana, Illinois, Tennessee, West Virginia, and California generate 65 percent of all hazardous waste produced Nationally, these states will probably be affected to a greater degree than others.

#### Related Regulations and Actions

*Internal:* Proposed hazardous waste rules linked with the three described in this calendar in creating the RCRA Subtitle C regulatory framework are:

(1) Standards Applicable to Transporters of Hazardous Waste, 43 FR 18506-18512, April 28, 1978 (proposed rule).

(2) Preliminary Notification of Hazardous Waste Activities, 43 FR 29908-29916, July 11, 1978 (proposed rule).

(3) Proposed Consolidated Permit Regulations, 44 FR 34244-34344 and Draft Consolidated Permit Application Form, 44 FR 34346-34392, June 14, 1979 (proposed rule and draft applications forms, respectively).

(4) Hazardous Waste Guidelines and Regulations, 44 FR 49402-49404, August 22, 1979 (supplemental proposed rule).

Rules regarding disposal of polychlorinated biphenyls (PCB's) were issued under the Toxic Substances Control Act, § 6(e), (15 U.S.C. § 2605). The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 *et seq.*) authorizes regulation of the disposal of pesticides and pesticide containers. The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 *et seq.*) controls incineration or dumping of hazardous waste at sea.

*External:* The Department of Transportation has developed hazardous materials transportation regulations (49 CFR Parts 171-173, 178-

179) controlling containerization and labeling of waste by generators using transporters engaged in interstate or foreign commerce. Proposed amendments to these regulations, to incorporate EPA's proposed rule, Standards Applicable to Transporters of Hazardous Waste, were published, 43 FR 22626-22634, May 25, 1978.

#### Active Government Collaboration

Department of Defense, Occupational Safety and Health Administration, Department of Energy, Food and Drug Administration, Soil Conservation Service, Water Resources Council, the Center for Disease Control of the Department of Health, Education and Welfare, Department of Transportation and Interstate Commerce Commission cooperated with EPA during development of the proposed regulations.

#### Timetable

Final Rules—Standards Applicable to Generators of Hazardous Waste (RCRA § 3002)—February 1980

Criteria for Identifying and Listing Hazardous Waste (RCRA § 3001)—April 1980;

Interim Status Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (RCRA § 3004)—April 1980.

Technical Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities will occur at a later date not yet specified.

Final Rules effective—Regulations for identification and listing of hazardous waste will be effective upon promulgation. Regulations affecting hazardous waste generators and owners or operators of hazardous waste treatment, storage, and disposal facilities will be effective six months after promulgation.

#### Available Documents

NPRM, 43 FR 58946-59208, December 18, 1978.

Supplemental Proposed Rule, 44 FR 49402-49404, August 22, 1979.

The EPA Office of Solid Waste Docket (Room 2439, EPA, 401 M Street, S.W., Washington, D.C.) maintains the following documents for public review:

- Draft background documents
- Draft Resource Requirements Summary
- Draft Regulatory Analysis
- Public Comments
- Summaries of ex parte contacts
- Public Hearing transcripts

Studies and reports on hazardous wastes and hazardous waste management.

Copies of the following documents are also available from Mr. Edward Cox, Solid Waste Information Office, 26 West St. Clair, Cincinnati, Ohio 45260:

Draft Environmental Impact Analysis  
Draft Integrated Impact Assessment  
of Hazardous Waste Management Regulations

Studies and reports on hazardous wastes and hazardous waste management.

#### Agency Contacts

Criteria for Identifying and Listing Hazardous Waste (RCRA § 3001)/  
Mr. Gary Dietric, Environmental Protection Agency, Office of Solid Waste, WH-562, Washington, D.C. 20460 (202) 755-9177

Standards Applicable to Generators of Hazardous Waste (RCRA § 3002),  
Mr. Harry Trask, Environmental Protection Agency, Office of Solid Waste, WH-563, Washington, D.C. 20460 (202) 755-9150

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (RCRA § 3004),  
Mr. John Lehman, Environmental Protection Agency, Office of Solid Waste, WH-565, Washington, D.C. 20460 (202) 755-9185

## CONSUMER PRODUCT SAFETY COMMISSION

### Consumer products containing asbestos

#### Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051, *et seq.*  
Federal Hazardous Substances Act, 15 U.S.C. § 1261, *et seq.*

#### Statement of Problem

The Consumer Product Safety Commission (CPSC) is concerned that the presence of asbestos in consumer products, under certain conditions, may present a risk of cancer and respiratory disease to consumers. On the basis of present information it appears that consumer products containing asbestos fibers can pose a health hazard if the asbestos fibers are released into the air, and therefore are available for inhalation by consumers and people in the household.

CPSC therefore issued an ANPRM in October. The primary purpose of the ANPRM is to begin a formal investigation by CPSC of the use of asbestos in consumer products by

identifying consumer products containing asbestos. Another purpose of this ANPRM is to discuss how CPSC will act to protect the public from exposure to asbestos fibers in consumer products, by a ban, by requiring labeling of consumer products containing asbestos, through encouraging some form of voluntary action by industry, or otherwise.

There is a large body of scientific evidence both from animal testing and from studies of health effects to people exposed to asbestos in occupational settings. Studies have demonstrated increased incidence of asbestos-related diseases, including lung cancer and mesothelioma (cancer of the pleura—the membranes surrounding the lung) among people who are exposed to asbestos occupationally and in places other than their occupation, as well as in individuals with only brief or intermittent "bystander" exposures. In addition, autopsy studies of lung tissues of residents in urban areas in many parts of the world indicate that the population as a whole is being exposed to asbestos from the general environment and that, once inhaled, asbestos fibers may remain lodged in the lungs for life.

Asbestos released from consumer products poses several problems in the household. First, young children and infants are exposed. This is of particular concern to the Commission. Second, asbestos fibers that consumer products release into the living space can remain there over long periods of time and may be subject to repeated cycles of settling and resuspension. The presence of asbestos fibers can thus pose an ongoing inhalation risk in the household. Third, unlike the workplace, where engineering control systems and protective clothing are available to minimize worker's exposure to asbestos, the home provides household members with little or no protection from exposure to asbestos fibers released from consumer products.

We do not know exactly how many asbestos-containing products are available; however, we estimate that hundreds of different types of consumer products contain asbestos in some form. Many consumer products, for example, contain asbestos paper as a thermal or electrical insulating barrier. Asbestos is also commonly used in household building products to provide strength and stability. As a result of information indicating that certain hairdryers released asbestos fibers during use, we had tests conducted by the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health, Education, and Welfare. The

results showed that some hairdryers released asbestos fibers into the air stream under ordinary conditions of use. Fibers that hairdryers emit impinge directly on the user's head under ordinary conditions of use; thus, any fibers the hairdryers emit are potentially inhalable.

As a result of negotiations between the Commission's staff and firms which share approximately 90 percent of the consumer hairdryer market, the firms agreed to cease production and distribution of hairdryers containing asbestos and to offer consumers some form of repair, replacement, or refund.

By issuing this ANPRM we expect to determine whether the information we have on consumer products containing asbestos is complete and what additional information is necessary to make regulatory decisions. When the information on consumer products which contain asbestos is complete, we will be able to determine whether to ban a product, require labeling, take some form of voluntary action, or take no action at all. We intend to apply the following criteria in selecting products for priority attention in this investigation:

- number of units of the product estimated by the Commission to be in use by consumers;
- the form and location of the asbestos in the product;
- the frequency, manner, and location in the consumer's environment of product use, including factors such as the useful life of the product and presence of heat and/or moisture and the likelihood of abrasion during use or foreseeable misuse;
- the likely availability and feasibility of substitutes for asbestos in the product;
- the relative ease of data collection and analysis by the Commission and the reporting burden on industry;
- the degree of potential overlap of CPSC reporting requirements with the information gathering efforts of other regulatory agencies, particularly the Environmental Protection Agency.

Failure to take action at this time will prolong consumer exposure to an unknown number of products that may be emitting asbestos fibers and may permit these fibers to become a part of the household ambient air and make removal of the fibers virtually impossible.

#### Alternatives Under Consideration

The ANPRM outlines the possible statutory tools for regulating asbestos in consumer products. For example:

- consumer product safety standards—establish requirements for performance,

composition, contents, design, construction, finish, or packaging of a product;

—information—require labeling of the product with warnings or instructions for use;

—ban—ban certain products as hazardous products or substances under the Federal Hazardous Substances Act;

—notification/recall—if the product presents a substantial product hazard we may require the manufacturer, distributor, or retailer to notify the public and either repair or replace the product or refund the purchase price.

If we discover a product containing asbestos which presents an "imminent hazard" to the public, we may act against such a product on an emergency basis, either independent of or pending completion of a rulemaking proceeding. In addition to these tools, we may also elect to develop voluntary action or to permit market forces to work by educating consumers about the dangers of exposure to asbestos fibers so they will demand products which do not emit asbestos fibers.

Another alternative is that the heightened public awareness of the dangers of exposure to asbestos fibers may cause consumers to demand asbestos-free products.

Another alternative would be to defer to the Environmental Protection Agency in their effort to control exposure to asbestos. In the short run, we could identify products that might present a hazard and develop the necessary remedy. But in the longer run, the most effective solution to the problem might be regulations to ban the unnecessary use of asbestos in all products.

#### Summary of Benefits

The benefits we expect from this proceeding are directly related to the primary goal of the chronic hazards program: the reduction of consumer exposure to chronically toxic substances. In the "Statement of Problem," we mention the unique nature of the consumer risk—that the product may release asbestos fibers during its use and the fibers may remain in the household air. Data show that these fibers, once inhaled, may remain in the lung and the pleura of consumers throughout their lifetimes. The primary benefit of the information we wish to collect, therefore, would be to identify products that release asbestos fibers, so that we could reduce or eliminate the consumer's exposure. The diseases that result from exposure to asbestos fibers—cancer, mesothelioma, and asbestosis (a lung condition caused by inhalation of asbestos dust)—are life threatening, cause incalculable pain and

suffering, and involve enormous medical expenses. The information we obtain from responses to the ANPRM will help us to determine the reduction in exposure and estimate the benefits to be derived from regulation to remove nonessential asbestos from consumer products.

#### Summary of Costs

The public would voluntarily supply the information requested by the ANPRM. The information we obtain as a result of this ANPRM on the number of consumer products, their use, the value of the products, and the costs of recall—should this step become necessary—may enable us to estimate the costs of any further action.

#### Sectors Affected

The ANPRM will be addressed to manufacturers (including importers) and private labelers of certain categories of consumer products, as well as to the general public. Because of the broad range of products that contain asbestos, firms in major sectors such as manufacturing, construction, wholesale trade, retail trade, and services are likely to respond.

#### Related Regulations and Actions

*Internal:* In 1977, the Consumer Product Safety Commission banned the manufacture and sale of patching compounds containing asbestos and of artificial gas-fired fireplaces emberizing (giving the appearance of a live coal) materials that contained asbestos (16 CFR 1304, 1305).

*External:* Several agencies regulate exposure to asbestos fibers. The Occupational Safety and Health Administration of the Department of Labor limits worker exposure to airborne asbestos fibers to two fibers, longer than five micrometers, per cubic centimeter of air (8-hour time weighted average) (29 CFR 1910).

The Environmental Protection Agency's national emission standard for hazardous air pollutants regulates demolition and renovation operations involving friable asbestos materials and prohibits spray application of these materials if they contain more than one percent asbestos (40 CFR 61).

The Department of Transportation regulates the transportation of asbestos and the packaging of asbestos for transportation (49 CFR 172-177).

The Food and Drug Administration, in 1972, banned asbestos-containing garments for general use (21 CFR 191).

#### Active Government Collaboration

We have worked closely with the Environmental Protection Agency to

assure that our efforts to investigate uses of asbestos and the work to create regulations will be coordinated, compatible, and nonduplicative. EPA simultaneously published an ANPRM in October which describes that Agency's effort systematically to gather information on groups of asbestos products and to evaluate risk from these products based on the "life cycle" concept. In the life cycle analysis, the Agency examines cumulative risk from exposure to asbestos from primary processing through end use and disposal. The CPSC ANPRM describes an approach to the investigation of possible health risks that may be associated with the use of asbestos in a number of consumer products.

Through close cooperation in our regulatory endeavors, EPA and CPSC hope to achieve the following three objectives. This first is to significantly reduce, through complementary actions, unreasonable human health risk from exposure to asbestos. The second is to reduce potential reporting burdens on industry by coordinating information gathering under each respective statutory authority. We plan to share all available data while maintaining the confidentiality of business information in accordance with applicable law. Third, to avoid inconsistent or needlessly burdensome regulations, we will develop regulatory actions that may result from these investigations in close consultations with each other.

#### Timetable

General and Special Orders to Industry—early 1980.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under Executive Order 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

#### Available Documents

CPSC—Consumer Products Containing Asbestos; Advance Notice of Proposed Rulemaking—44 FR 60057, October 17, 1979.

#### Agency Contact

Francine Shacter, Program Manager  
Office of Program Management  
U.S. Consumer Product Safety  
Commission  
Washington, D.C. 20207  
(301) 492-6557

## CPSC

### Omnidirectional Citizens Band base station antenna standard

#### Legal Authority

Consumer Product Safety Act §§ 7 and 14, 15 U.S.C. §§ 2056 and 2063.

#### Statement of Problem

The Consumer Product Safety Commission (CPSC) staff estimates that approximately 220 persons in 1975, 275 persons in 1976, and 220 persons in 1977 were electrocuted in incidents involving communications antennas. The vast majority of these deaths occurred when the antennas were being put up or taken down and in the process contacted electric power lines. Typically, these incidents occur when the antenna contacts the power line while the antenna is being transported to the erection site or when it falls into a power line because it gets out of the control of the people who are putting it up or taking it down. The Commission estimates that over 70 percent of the antennas involved in these accidents are Citizens Band (CB) base station (other than mobile) antennas.

The Commission on June 29, 1978 issued a rule under § 27(e) of the Consumer Product Safety Act which requires manufacturers and importers of (1) outdoor Citizens Band (CB) base station antennas, (2) outdoor television antennas, and (3) antennas supporting structures to provide purchasers with (a) instructions on how to avoid the hazard of contacting electric power lines with the antenna or supporting structure while putting it up or taking it down, (b) labels on the antennas and supporting structures warning of this hazard and referring the reader to the instructions, and (c) statements on the packaging or parts container and at the beginning of the instructions warning of this hazard and referring the reader to the instructions. We intend this rule to help prevent injuries and death from electric shock because of contact with electric power lines when people put up or take down antennas or antenna supporting structures. The Commission reasoned that if consumers know of the danger and how to avoid it they will be able to take the necessary steps to protect themselves.

While the Commission believes that the information and labeling rule will reduce the deaths that occur because of the contact of television and CB base station antennas with electric power lines, the Commission also believes that a standard which would insure that the antenna would not transmit a harmful amount of electricity to the installer if

the antenna did contact a power line may address the risk of electrocution more effectively and thereby cause a greater reduction in deaths.

#### Alternatives Under Consideration

Possible alternatives to pursuing a mandatory standard at this time include delaying further action until we measure the § 27(e) information and labeling rule's ability to reduce deaths and injuries. The Commission estimates that it could take from one to two years to assess the rule's effectiveness because of the time it takes to influence the product mix (number of complying products) in the market place.

Another alternative is a voluntary approach through the Electronics Industry Association (EIA). The EIA recently formed an ad hoc committee to develop a voluntary standard for CB and TV antennas. While the voluntary approach would require the least amount of CPSC resources to develop a standard, it is unclear what would be the level of industry conformance with the voluntary standard, and therefore we do not know what percent of the known antenna-related deaths we could prevent.

Under the Consumer Product Safety Act, a proposed consumer product safety standard may generally be developed in the following ways: (1) The Commission may solicit offers from people or organizations outside the Commission to develop a recommended standard. People submitting such offers are referred to as "offerors" and the development of recommended standards in this matter is called the "offeror process," (2) the Commission may invite people or organizations outside the Commission to submit to the Commission an existing standard which it could propose as a consumer product safety standard; (3) the Commission may publish an existing standard as a proposed consumer product safety standard; or (4) the Commission may develop the standard itself.

In the case of the electrocution hazard associated with CB base station antennas, the Commission is not aware that any Federal department or agency or other qualified agency, organization, or institution has issued, adopted, or proposed any standard that would adequately reduce the risk and that the Commission could publish as a proposed standard. The Commission has determined that it would be more expeditious to develop this standard itself than for interested parties outside the Commission to develop the standard. The Commission started the proceeding by publishing a Notice of

Proceeding in the Federal Register in September, 1979.

#### Summary of Benefits

The benefits from this proceeding are related to the injury and death information we cited in "Statement of Problem." The staff estimates that the standard could prevent about 64 percent of the deaths associated with outdoor communications antennas (all outdoor antennas) in that it will cover omnidirectional (reception and transmission essentially uniform in all directions) antennas only.

In addition to the reduction in deaths associated with the standard, we anticipate that the § 27(e) rule will reduce other deaths: (a) those associated with antennas manufactured between October 1978, the effective date of the rule, and the date when the new standard will take effect; and (b) those deaths associated with antennas that the standard does not cover.

Certain provisions of the standard may also benefit consumers in the form of improved performance and increased useful life of the product.

#### Summary of Costs

The CPSC staff estimates that the average price of CB antennas will probably increase as a result of the standard; however, we do not yet know the relative cost effect of the standard on prices of antennas, since the costs are dependent upon the requirements.

We anticipate that manufacturers may meet the standard by coating or covering the antenna with a non-conductive material, or by constructing antennas of a non-conductive material, depending on the required strength, electrical resistance, and performance life. One type of non-conductive material that industry representatives have suggested is fiberglass.

Based on information available at this time, price increases ranging up to about 25 percent might occur, depending on the means manufacturers use to comply with the standard. Certain producers may leave the CB antenna market if they cannot develop the capability to produce insulation at a reasonable cost.

#### Sectors Affected

The standard would affect manufacturers, distributors, and private labelers (who manufacture items for sale by a firm other than the manufacturer and under the firm's name) of CB base station omnidirectional antennas. The standard may subsequently affect additional firms involved with directional antennas if studies now underway determine that it

is feasible to include the additional products.

The standard may also affect suppliers of insulating materials (e.g., fiberglass).

#### Related Regulations and Actions

*Internal:* § 27(e) Rule for CB Base Station and TV Antennas (16 CFR 1402).

*External:* Electronics Industry Association (EIA) development of a Voluntary Standard for CB Antennas.

#### Active Government Collaboration

We encourage Federal and State governments to participate in developing the standard.

#### Timetable

NPRM—April 30, 1981.

Final Rule—October 30, 1981.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under Executive Order 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

#### Public Meeting Dates—

November 1, 1979, Washington, D.C.

February 28, 1980, (Tent.),

Washington, D.C.

June 30, 1980 (Tent.), Washington, D.C.

October 31, 1980 (Tent.), Washington, D.C.

#### Available Documents

"CPSC Staff Briefing Packages" dated January 23, 1979 and August 1, 1979 are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

Omnidirectional Citizens Band Base Station Antennas—Proceeding to Develop a Consumer Product Safety Standard by the Commission—September 14, 1979 44 FR 53676.

#### Agency Contact

Carl Blechschmidt, Program Manager  
Office of Program Management  
U.S. Consumer Product Safety  
Commission  
Washington, D.C. 20207  
(301) 492-6557

#### CPSC

Upholstered furniture cigarette flammability standard

#### Legal Authority

Flammable Fabrics Act, § 4, 15 U.S.C. § 1193.

#### Statement of Problem

The staff of the Consumer Product Safety Commission (CPSC) estimates that 45,000 upholstered furniture fires

occur each year in residences in the United States; 33,000 of these fires are associated with cigarettes. Current estimates indicate that 3,200 injuries and 800 deaths occur annually because of these fires. At a minimum, 1,700 of the injuries and 500 of the deaths involve the hazard of cigarette ignition of residential upholstered furniture. Among other actions, the Commission is considering a flammability standard for upholstered furniture to reduce the number of injuries and deaths.

The Commission staff estimates that property damage resulting from cigarette ignition of upholstered furniture runs \$25 million annually. The human losses are a minimum of 1,700 injuries and 500 deaths. These losses are difficult to express in economic terms, especially since the Commission does not endorse monetary estimates of the value of human life. However, for illustrative purposes only, the CPSC staff has used a figure of \$1 million per life. This figure is probably a conservative expression of value, but is within the range of estimates that are associated with studies of the "statistical value of life." The cost of lives lost, therefore, could be about \$500 million. The staff has also estimated \$16 million for injuries exclusive of pain and suffering. A rough estimate of the annual losses associated with cigarette ignition of upholstered furniture, thus, is \$541 million.

#### Alternatives Under Consideration

One major alternative to promulgating a mandatory performance standard is working with the Upholstered Furniture Action Council on its voluntary program. The Commission also is considering reducing the scope of the standard by excluding some classes of furniture, such as business, institutional, and children's furniture. The staff is not actively considering a mandatory design standard, since an alternative performance standard is preferable and appears to be feasible.

The mandatory performance standard that the Commission is considering contains requirements that are significantly less costly than requirements in previous proposals which the Commission drafted. Under the current draft proposed standard, firms would test upholstery fabrics and place them into one of four classes—A through D—on the basis of their resistance to ignition from cigarettes burned on the fabric. Fabric manufacturers would label fabrics according to these classes to show their flammability classification.

Furniture manufacturers would determine furniture constructions suitable for use with the fabric classes

by testing mockups of the furniture to demonstrate their resistance to cigarette ignition. The standard would require annual testing. The standard would permit manufacturers to use only the combinations of fabric and filling materials that did not ignite when the applicable mockup was tested.

The major alternative to the mandatory standard is voluntary action by the industry. The Upholstered Furniture Action Council's (UFAC) recommended voluntary practices program encourages the classification of fabrics into two categories according to fiber content or performance in a cigarette ignition test that UFAC developed. For furniture containing Class I fabrics, the program provides for eliminating welt cord (heavy yarn enclosed by fabric around the edges of furniture cushions) that is ignition prone and eliminating untreated cotton beneath the decking fabric (the material on which a loose seat cushion rests) and in immediate contact with the covering of inside vertical walls. The construction provisions for furniture using Class I and II fabrics are the same, except that manufacturers of furniture using Class II fabrics must prevent contact between conventional polyurethane foam cushions and horizontal seating surfaces. The UFAC voluntary program provides test methods to determine acceptable filling materials for use in furniture.

#### Summary of Benefits

The benefits we expect from this proceeding are related to the injury and loss statistics we cite in "Statement of Problem." The staff estimates that the standard could prevent about 430 deaths, 1,462 injuries, and \$22 million in property damage, which constitute 86 percent of the losses. The Commission staff estimates that the annual benefits (calculated as discussed in "Statement of Problem") could be about \$470 million when all upholstered furniture is manufactured in compliance with the standard.

Other benefits that may be related to the cigarette ignition standard are a reduction in losses associated with pain and suffering from burn injuries, a possible reduction in losses due to ignition sources other than cigarettes, and a possible increase in the durability of upholstered furniture fabrics as thermoplastics replace cellulosic fibers.

#### Summary of Costs

The CPSC staff estimates that the annual retail cost increase to the consuming public as a result of the mandatory standard which it is considering would range from \$114 million to \$174 million.

The staff estimates that the average manufacturing cost increases would range from \$1.75 to \$2.65 per piece (\$3.50 to \$5.30 retail price increase) for chairs and from \$3.30 to \$5.00 per piece (\$6.60 to \$10.00 retail price increase) for sofas.

The CPSC staff estimates that the possible increases in manufacturing cost that result from the standard would range from about \$57 million to \$87 million in the first year that all provisions of the standard are in effect. This projected increase consists of anticipated costs of \$8 million to \$9 million for furniture mockup testing; \$18 million to \$33 million for use of filling material with greater resistance to cigarette ignition; \$12 million to \$17 million for smolder-resistant backcoating of 50 percent of the Class D fabrics, which are the least smolder-resistant fabrics that the fabric classification test reveals; \$8 million to \$11 million for the use of foil barriers on 10 percent of the furniture pieces that are covered with Class D fabrics; and \$3 million to \$5 million for required recordkeeping.

Consumers may find fewer types of upholstery fabrics available. We expect heavier fabrics, such as damasks, jacquards, and velvets that are made from cotton and rayon to require more extensive and costly treatment under the standard. CPSC staff expects the early response to be a shift by the furniture industry away from these fabrics to fabrics made from thermoplastic fibers, such as nylon, polyester, or olefin. We estimate that the furniture industry may not use 10 to 14 percent of currently available fabrics under the standard.

#### Sectors Affected

The standard we are considering would affect three primary industrial sectors: (1) upholstered furniture manufacturers, (2) material suppliers, and (3) distributors, wholesalers, and retailers.

The Commission staff expects that the standard would result in relatively greater cost increases for the smaller furniture and fabric producers than for larger producers. The smaller producers would be expected to face higher furniture mockup testing costs as a percentage of sales. These costs may represent about 2 percent of the total value of shipments for firms with less than \$250,000 in annual sales. Firms with about \$2 million in annual sales are expected to face costs for mockup testing totaling .3 percent of their value of shipments. Firms with annual sales of about \$7 million can expect to have mockup testing costs of only .1 percent of their value of shipments. This

disparate effect on smaller firms may be made worse to the extent that these firms produce furniture covered with fabric supplied by the customer, which is more likely to be Class D fabric. The requirement for Class D mockup tests would substantially increase the price of such special order items. The Commission believes that smaller furniture manufacturers are more likely than larger ones to produce furniture with a customer's own material.

Small fabric producers, like small furniture producers, can expect to face higher testing costs as a percentage of sales than larger fabric producers. In addition, these firms are more likely to produce cotton or other cellulosic fabrics that we expect to decline in demand as an early response to the standard. Conversion to greater use of thermoplastic fibers by these firms may be difficult. Capital costs of altering machinery may be necessary. Furthermore, these changes would place these firms in more direct competition with the larger firms that now produce thermoplastic fabrics.

Changes in filling materials used under the standard may affect suppliers of polyester fiberfill and urethane foam cushioning who are likely to find increased demand for their products. Others, such as producers of cotton batting, are likely to face a reduction in demand by the furniture industry. The extent of the reduction in demand for certain filling materials, as well as for cellulosic fabrics, will largely depend on the result of research now underway into smolder-retardant treatment methods for materials which are flammable.

#### Related Regulations and Actions

*Internal:* None.

*External:* The State of California has flammability regulations, parts of which the CPSC standard would preempt. Other States may have similar regulations.

#### Active Government Collaboration

The National Bureau of Standards of the Department of Commerce developed the technical basis for the standard.

#### Timetable

NPRM—late 1979.

Public Comment—following NPRM.

Final Rule—fall 1980.

Final Rule effective—fall 1981.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under Executive Order 12044. However, the Commission prepares essentially the same information in

its rulemaking proceedings.

#### Available Documents

"CPSC Staff Briefing Packages," dated November 15, 1978 and September 27, 1979 and other applicable material related to upholstered furniture flammability are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

#### Agency Contact

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Commission  
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## NUCLEAR REGULATORY COMMISSION

### Decommissioning and site reclamation of uranium and thorium mills

#### Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, P.L. 95-604, 92 Stat. 3021 (1978).

#### Statement of Problem

The purpose of this regulation is to minimize the potential for public exposure to radioactive materials from uranium mill tailings. The milling of ores for the extraction of uranium or thorium generates large volumes of sand-like residues generally called tailings, which contain small quantities of naturally occurring radioactive materials. Milling activities also result in the radioactive contamination of mill buildings, equipment, and sites, from the naturally occurring radioactive materials in the ores. After a mill closes, it is important to the public health and safety that the tailings generated during the milling operations be stabilized and controlled to prevent radioactive materials from entering the environment, and that mill buildings, equipment, and site be cleaned to remove any residual contamination that may have resulted from the milling operations. This regulation will clearly specify Nuclear Regulatory Commission (NRC) requirements for the cleaning and restoration of mill sites after a mill closes. These actions are commonly referred to as decommissioning and reclamation. The regulation will also specify financial surety arrangements to ensure that funds are available to cover cleaning and restoration activities.

#### Alternatives Under Consideration

The NRC is evaluating several alternatives in a generic environmental

impact statement on uranium milling pursuant to the National Environmental Policy Act of 1969, as amended.

Technical alternatives for controlling tailings include below-grade storage, disposal in open pit mines, various types of coverings, and different milling processes. Alternative financial arrangements include surety bonds, cash deposits, certificates of deposit, and letters of credit.

#### Summary of Benefits

The benefits from the regulation are not quantifiable in terms of dollar amounts, since the radioactive materials involved would persist for hundreds of years if cleaning and restoration were not undertaken. The regulation will result, however, in a reduction of potential exposures to the public of radiation to essentially the levels that existed before the milling operations, as well as giving further guidance to licensees and the public regarding NRC thinking in this area.

#### Summary of Costs

The minimum estimated one-time cost for each mill to comply with this regulation is approximately \$5-6 million, regardless of which technical alternative it chooses. For a total of 64 mills, the minimum estimated aggregate cost would be \$320-384 million. However, costs are highly site-specific and involve many variables, such as size of mill, ore grade, geology, topography, hydrology, etc. Costs ranging from \$8-12 millions per mill, if required, would represent overall costs of less than 1 percent of the price of the uranium the mills produce and 0.1 percent of the mills' electricity costs.

#### Sectors Affected

This regulation would affect all holders of licenses involving uranium and thorium milling. This includes 21 presently operating mills and an additional 43 uranium mills that are projected to be built by the year 2000, based on an annual nuclear generating capacity of 380 gigawatts of electricity in the year 2000.

#### Related Regulations and Actions

*Internal:* Regulations specifying requirements for the cleanup of other types of nuclear facilities at the end of their operating life.

*External:* The Uranium Mill Tailings Radiation Control Act of 1978 requires the Environmental Protection Agency (EPA) to establish standards of general application for the protection of public health and safety and the environment from radiological and nonradiological hazards that are associated with mill

tailings. The NRC has the responsibility for implementing and enforcing the EPA standards.

The Department of Energy has authority under the Uranium Mill Tailings Radiation Control Act of 1978 to undertake remedial action at certain inactive mill sites.

Various States have an agreement with NRC to assume certain regulatory responsibilities for some uranium mill sites.

#### Active Government Collaboration

The NRC has active liaison with the Environmental Protection Agency and the Department of Energy.

#### Timetable

"Final Generic Environmental Impact Statement on Uranium Milling"—April 1980.

Final Rule—April 1980.

Regulatory Analysis—not required but similar material available in NPRM.

#### Available Documents

"Draft Generic Environmental Impact Statement on Uranium Milling"—April 1979.

NPRM—August 1979.

Public Hearing—September 1979.

Notice of Intent to Prepare Generic Environmental Impact Statement on Uranium Milling—41 FR 22430, June 3, 1976.

Available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C.

#### Agency Contact

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Office of Standards Development  
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## NRC

### Decommissioning of nuclear facilities

#### Legal Authority

Atomic Energy Act of 1955, as amended, § 161, 42 U.S.C. § 2201.

#### Statement of Problem

Decommissioning is the removal or isolation of the radioactive contaminants from a nuclear facility so that it can be released for unrestricted use. The purpose of this regulation is to specify Nuclear Regulatory Commission (NRC) requirements for planning and implementing decommissioning in order to reduce potential radiation hazards to both the public and workers at a facility after the end of its useful life. The regulation will clearly specify NRC requirements for the method, cleanup criteria, schedule, and financial assurance of decommissioning actions.

### Alternatives Under Consideration

The present regulatory approach leaves the choice of decommissioning method, schedule, and financial procedures to the licensee within a loose framework of regulatory criteria. Under the proposed regulatory approach, the regulation will carefully specify these.

NRC is considering two major alternatives for the method of decommissioning. One is the removal of radioactive constituents by the licensee, allowing unrestricted use of the facility and site. The other is the permanent isolation of the radioactive components on the site, where small portions of the site will have temporary limited access for public use (depending on radioactive decay times). For facility components that have long-lived radioactive materials (i.e., significant activity for 100 years or more), the latter method is unacceptable, because their isolation cannot be adequately guaranteed. The regulation may provide for delays of varying lengths before decommissioning to allow for reduction of radiation exposure and decommissioning costs.

The regulation will also consider various methods of paying for decommissioning. While it is generally acknowledged that those who benefit (the users of the power) should pay, the manner and timing of such payment is unclear. Requiring funds before NRC issues a license, while a facility is in operation, at the end of its life, or a combination of these are all viable alternatives.

### Summary of Benefits

At the present time, NRC can characterize the benefits of the regulations only in a qualitative way. Systematic and encompassing regulations identified as part of licensing requirements will ensure that decommissioning is accomplished safely. This will result in reducing the potential radiation hazards to both the public and occupational workers. Moreover, it will eliminate potential financial burdens on the public that might otherwise occur at the time of decommissioning.

The following are examples of regulatory particulars that are designed to provide the desired benefits: (1) Clearly specified decommissioning requirements simplify planning and conduct of decommissioning activities and reduce the need for remedial actions to clean up sites that are found to have been inadequately decommissioned; (2) NRC design requirements for new facilities that are directed toward facilitating eventual decommissioning can mitigate

occupational radiation exposures associated with decommissioning, as well as reduce radiation exposures that are associated with routine facility operations.

### Summary of Costs

The estimated cost of decommissioning a single nuclear power reactor is approximately \$40 million. There are 70 such reactors now operating, and almost twice that many are under construction or being planned. None of the currently operating reactors is in need of decommissioning in the near future. Although this action would not change the existing responsibility of licensees to decommission, it could require immediate collections from electricity customers to accumulate decommissioning funds. These collections could amount to \$2 million per year for each reactor, or a total amount of \$140 million per year. While the added cost to the consumer would depend on many factors, we estimate this cost to be relatively insignificant and on the order of a tenth of a mill (1/100 of a cent) per kilowatt-hour of electricity used. If NRC requires advanced collection or surety bonding, rather than collection over the anticipated operating life of the facility, the economic impact will be to further increase the cost of the electricity that nuclear reactors produce. It is not likely that the change in the cost of electricity will affect the existence of any reactor-owning company. It is possible that additional financial assurance costs could drive smaller nuclear fuel cycle licensees such as fuel fabricators or uranium mill operators out of the nuclear business.

The cost of decommissioning and financial assurance for the more than 20,000 material licensees (e.g., radiopharmaceutical suppliers, industrial radio-isotope users) is not well established at this time.

### Sectors Affected

Those affected are all holders of NRC licenses or State licenses for which a State has an agreement with NRC to assume certain regulatory responsibilities for nuclear materials and facilities. This includes approximately 70 current nuclear power plants and more than 20,000 holders of material licenses (i.e., radiopharmaceutical suppliers, industrial radioisotope users, etc.).

### Related Regulations and Actions

*Internal:* NRC action regarding radioactive waste disposal.

*External:* Environmental Protection Agency: The EPA standard for low level radioactive residues in the environment.

Federal Energy Regulatory Commission: FERC requirements for accounting methods and treatment of decommissioning costs by electrical wholesalers.

Internal Revenue Service: IRS rulings on tax treatment of funds collected for future decommissioning actions.

State Public Utility Commission: Requirements for accumulation of funds for decommissioning.

State Legislatures: Passage of laws requiring bonds or other surety for nuclear decommissioning.

### Active Government Collaboration

We are carrying on active liaison as part of this program with the States, Environmental Protection Agency, the Federal Energy Regulatory Commission, and the Internal Revenue Service.

### Timetable

Environmental Impact Statement—  
January 1980.  
Policy Statement—September 1980.  
NPRM—February 1981.

### Available Documents

NUREG-0436, Rev. 1, "Plan for Reevaluation of NRC Policy of Decommissioning of Nuclear Facilities," dated December 1978.

NUREG-0278, "Technology, Safety and Cost of Decommissioning of Reference Nuclear Fuel Reprocessing Plant," dated October 1977.

NUREG/CR-0130, "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated June 1978.

NUREG/CR-0130 (Addendum), "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated August 1979.

NUREG/CR-0131, "Decommissioning of Nuclear Facilities—An Annotated Bibliography," dated October 1978.

NUREG/CR-0129, "Technology, Safety and Costs of Decommissioning a Reference Small Mixed Oxide Fuel Fabrication Plant," dated February 1979.

NUREG/CR-0671, "Decommissioning Nuclear Facilities: A Review and Analysis of Current Regulations," dated August 1979.

Available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C.

### Agency Contact

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**NRC**  
**Disposal of high level radioactive waste in geologic repositories**

**Legal Authority**

Energy Reorganization Act of 1974, § 202(3) and (4), U.S.C. § 5842.

**Statement of Problem**

The Energy Reorganization Act of 1974 gives the Department of Energy (DOE) the responsibility for building and operating facilities for the disposal of high level radioactive waste (HLW) that is generated by either the government or the commercial nuclear industry. The Energy Reorganization Act also gives the Nuclear Regulatory Commission (NRC) licensing and regulatory authority over such DOE facilities. (Generally, the NRC does not have licensing or regulatory authority over DOE facilities or DOE activities).

The intent of this regulation is to provide information to DOE and other interested parties on how the NRC plans to exercise its authority over DOE facilities to be used for the disposal of HLW in prepared cavities deep in the earth. (This method of waste disposal is commonly termed "geologic disposal," and the facility itself is called a "geologic repository.") Specially, the regulation spells out the procedures DOE should follow in applying for an NRC license for geologic disposal of HLW and the procedures NRC should follow in reviewing that application, and it states the technical criteria the NRC will use in evaluating that application, approving or disapproving a license, and inspecting the placement of the waste within the geologic repository. Specific topics addressed include the suitability of a site, the design of a repository, and the closure of a repository.

**Alternatives Under Consideration**

This regulation addresses only geologic disposal of HLW. The NRC had considered promulgating a broad regulation to cover other methods which have been suggested for the disposal of HLW, such as placing the wastes on the ocean floor (seabed emplacement), or within a polar ice cap (icesheet disposal). However, neither of these methods appears to be within NRC's jurisdiction, and other potential methods (e.g. transmutation—alternation of the waste to decrease its radioactivity) do not appear to be technically developed yet to the point that rulemaking would be warranted.

The NRC had also considered whether to proceed with rulemaking at this time or to rely on its existing body of

regulations in discharging its licensing responsibilities over the disposal of HLW. The NRC has decided to proceed with rulemaking, because reliance on existing regulations would either give proper perspective to the unique problem of geologic disposal of HLW, nor provide the guidance to both the DOE and the public which NRC believes to be necessary to an efficient and publicly accessible licensing process. The need to proceed now is highlighted by the fact that DOE has indicated that it intends to apply for a geologic disposal license in the near future.

**Summary of Benefits**

There is great concern on behalf of the public, State governments, and the Congress that a "safe" method be found for the disposal of HLW. A rulemaking action at this time tends to add confidence that geologic disposal is a safe, feasible method. The sort of regulation we are proposing will result in further confidence, by providing an opportunity for public review and comment during the construction, operation, and closure of the repository. Another benefit is that the regulation will serve as a base from which DOE can plan and develop such a facility, hence saving both time and expense in the licensing process.

**Summary of Costs**

Estimated construction and operation costs for a geologic repository range from one billion dollars to five billion dollars. Estimates of the impact on the cost of electricity production vary over a wide range, but we do not expect the cost to exceed one mill (\$0.001) per kilowatt hour. As may as four repositories may be required to accommodate the HLW that the government and commercial interests generate by the end of the century.

The only direct costs related to this regulation are the "resources that NRC expends to develop, support, and issue it." The bulk of this will be costs for technical assistance contracts.

**Sectors Affected**

Industry would be able to dispose of its high level radioactive waste permanently in a DOE repository licensed under this regulation. State and local government would be able to participate in the licensing process under the provisions of this regulation. This regulation would require a finding of reasonable assurance that the high level radioactive waste could be disposed of in such a manner as to protect the public health and safety and the environment.

**Related Regulations and Actions**

*Internal:* This action is related to an NRC program to classify radioactive waste according to the degree of hazard it presents.

*External:* This action is related to the Environmental Protection Agency's criteria and standards for the disposal of HLW.

**Active Government Collaboration**

There is active liaison with the Environmental Protection Agency, the United States Geological Survey, and the Department of Energy.

**Timetable**

ANPRM—December 1979.

NPRM—December 1979.

Final Rule—June 1980.

Regulatory Analysis—not required but similar material available in NPRM.

**Available Documents**

Commission Paper—SECY 79-366 (and agenda).

Policy Statement—"Licensing Procedures for Geologic Repositories for High-Level Radioactive Wastes" (43 FR 53869, November 17, 1978).

NUREG-0279—"Determination of Performance Criteria for High-Level Solidified Nuclear Waste," July 1977.

NUREG-0465—"A Classification System for Radioactive Waste Disposal—What Waste Goes Where?" June 1978.

Available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C.

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**Chapter 4—Human Resources**

	DOJ-BOP	
Non-Discrimination Towards Inmates .....		68310
	DOJ-CRD	
Regulations prohibiting discrimination solely on the basis of handicap in Federally assisted programs .....		68310
	DOJ-INS	
Replacement of Alien Registration Receipt Cards—Requirement for Single Fingerprint and Personal Appearance .....		68311
	DOJ-LEAA	
Equal Service Program Guidelines .....		68312
	DOL-ESA	
Proposed amendment to the Sex Discrimination Guidelines (4 CFR 60-20) governing insurance and other employee benefit plans .....		68313
	DOL-ETA	
Nondiscrimination on the Basis of Handicap in Federally Assisted Programs .....		68314

## EEOC

Recordkeeping regulations, extending the length of time certain records, already required to be kept should be retained. 68316

## GSA-NARS

Freedom of Information Act requests for national security classified information in the National Archives 68317

## VA

Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance 68318

## DEPARTMENT OF JUSTICE

## Federal Bureau of Prisons

## Non-discrimination towards inmates

## Legal Authority

18 U.S.C. §§ 4001, 4042. 28 CFR 0.95(c)-.96(t).

## Statement of Problem

The Bureau of Prisons of the Department of Justice is responsible for some 25,000 inmates confined in over 40 Federal correctional institutions. Within each institution there is a mixture of persons of different races, religions, nationalities, and political beliefs; some institutions house both male and female prisoners. In order to assure inmates' rights and to maintain security and the orderly operation of each institution, it is important that discrimination not exist in the management of the inmate population.

The Bureau of Prisons is presently seeking to have its facilities accredited by the American Correctional Association's Commission on Accreditation for Corrections. The ACA, a private, national organization, exerts a positive influence on the shaping of national correctional policy and promotes the professional development of persons working within all aspects of corrections. The Commission's accreditation standards provide Bureau institutions with nationally recognized standards against which to measure the Bureau's own standards and operations. This accreditation calls for prison administrations to maintain comprehensive written policies and procedures by which the institutions operate, including a written statement of policy on non-discrimination. While the Bureau of Prisons has a longstanding policy of non-discrimination and an internal program statement on integration and equal opportunity, we are promulgating a rule in order to reflect more comprehensively the Bureau's posture on discrimination and to comply more fully with the accreditation requirements.

## Alternatives Under Consideration

An alternative to the promulgation of a written policy specifying non-discrimination towards inmates is to continue the status quo. Since the Bureau is applying for accreditation for its institutions, and since written policies and procedures are necessary for accreditation, the alternative of taking no action is not acceptable.

The Bureau plans to include within its directive a requirement that inmates may not be discriminated against on the basis of race, religion, nationality, sex, or political belief. The Warden of each institution is to review and, as necessary, is to establish local procedures to ensure that work, housing, program assignments, and administrative decisions are non-discriminatory and that inmates are provided equal opportunities to participate in all institutional activities.

The Bureau of Prisons provides procedures by which an inmate may express a complaint regarding any type of discrimination. These procedures include attempts at informal resolution through counselling, and the use of the more formal inmate complaint procedure, the Administrative Remedy Procedure.

## Summary of Benefits

The major benefit is to the individual inmate, who is assured through a formal program statement an equal opportunity to participate in all institution programs. Implementation of the regulations will enhance, indirectly, the morale of inmates and staff within the institution. The demonstration and fulfillment of this commitment of non-discrimination towards inmates will enhance the orderly operation of institutions.

## Summary of Costs

The Bureau's policy of non-discrimination towards inmates is longstanding, and we expect no additional costs.

## Sectors Affected

The implementation of written policies and procedures to ensure non-discrimination towards inmates has a direct effect on each Bureau institution, and on the Bureau of Prisons' efforts to achieve accreditation. Indirectly, the written policy and procedure providing for inmates to receive equal opportunities to participate in all institutional programs will favorably affect inmates confined within the Bureau's institutions.

## Related Regulations and Actions

*Internal:* Bureau of Prisons, February, 1966 Program Statement on "Integration."

*External:* None.

## Active Government Collaboration

None.

## Timetable

NPRM—late 1979.

Public Comment—60 days after NPRM.

Final Rule—spring 1980.

Final Rule effective—spring 1980.

Regulatory Analysis—not required.

## Available Documents

Bureau of Prisons Program Statement 1040.1, "Integration", dated February 7, 1966. Available by writing to:

Director

Federal Bureau of Prisons  
U.S. Department of Justice  
320 First Street, N.W.

Washington, D.C. 20534

The envelope should be marked "FOI request".

## Agency Contact

Mike Pearlman, Rules and Regulations Specialist

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## DOJ—Civil Rights Division

Regulations prohibiting discrimination solely on the basis of handicap in federally assisted programs

## Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794. Executive Order 11914, 41 FR 17871, Oct. 31, 1976. HEW Guidelines on Rehabilitation, 45 CFR 85.

## Statement of Problem

A substantial number of people in the United States are denied full participation in major activities such as employment because of discrimination based on their handicaps. Recognizing this fact, the Congress passed § 504 of the Rehabilitation Act of 1973, which prohibits discrimination solely on the basis of handicap in all programs and activities that receive Federal financial assistance. Federal agencies that provide such assistance must develop and publish regulations in furtherance of the broad remedial purpose of § 504.

## Alternatives Under Consideration

Executive Order 11914 requires all Federal departmental regulations that

implement § 504 to be consistent with those that the Department of Health, Education and Welfare (HEW) issues. Accordingly, there are no alternatives to the standards which HEW has published (43 FR 2132) in terms of scope, timing or substantive requirements obligating recipients of Federal assistance from the Department of Justice. However, within that context, the Department has attempted to take the least burdensome approaches to achieving the objectives of § 504. For example, the Department's proposed § 504 regulations require employers with 50 or more employees who receive Department assistance of more than \$25,000 to provide for recordkeeping and notice procedures and grievance mechanisms. This standard makes the proposed Department of Justice regulations consistent with the Law Enforcement Assistance Administration's Equal Employment Opportunity Guidelines (28 CFR 43.302(d)) for the development, by recipients of Federal assistance through the Department, of an equal employment opportunity program with respect to race and sex. Accordingly, we rejected other, more inclusive criteria, e.g., 15 or more employees and no minimum amount of financial assistance through the Department of Justice.

Further, while recipients are encouraged to provide communications to their applicants, employees, and beneficiaries in the appropriate medium (e.g., braille, tapes), the regulations require only that recipients communicate effectively with those who have impaired vision and hearing (§ 42.503(e) of proposed regulations). Other options that the Department is considering are included in the Supplementary Information section of the proposed rulemaking (44 FR 54957-60, September 21, 1979).

#### Summary of Benefits

The regulations will establish standards to assure nondiscrimination based on handicap in programs and activities that receive Federal financial assistance from the Department of Justice. They will define and prohibit acts of discrimination against qualified handicapped persons in employment and as beneficiaries of programs and activities that receive assistance from the Department. Programs and activities that the regulation would cover would include those administered by State and local units of the criminal justice system who receive Federal assistance in the form of grants and Federal assistance contracts from the Law Enforcement Assistance Administration (e.g., police departments, prisons, courts), or training

from the Federal Bureau of Investigation or other agencies within the Department of Justice. The proposed regulations state that procurement contracts and contracts of guaranty are not to be considered Federal assistance.

The elimination of discrimination against the handicapped in Federally assisted programs and activities will further advance the national policy against such invidious discrimination, will assure that the benefits of Federally assisted programs and activities will be extended to the qualified handicapped, and will preclude the discriminatory exclusion of the handicapped as employees in programs and activities that receive Federal financial assistance.

#### Summary of Costs

It is difficult to project the cost of compliance. Two aspects of § 504 may increase the expenditures of recipients administering Federally assisted programs. The first requires that recipients make a reasonable accommodation for the known physical or mental limitations of an otherwise qualified handicapped applicant or employee. A reasonable accommodation might involve job restructuring, modified work schedules, or acquisition or modification of equipment or devices. What constitutes a reasonable accommodation must be decided on a case-by-case basis.

The second aspect requires that programs and activities that receive Federal assistance be prohibited from excluding qualified handicapped people from Federally assisted programs because a recipient's facilities are inaccessible or unusable. Structural changes to existing facilities may be unnecessary where other less costly or burdensome methods are equally effective. Facilities constructed after final rulemaking must, however, be designed and constructed to make them accessible to and usable by the handicapped. We cannot provide precise estimates of compliance costs at this stage, although at present it appears that the compliance cost of the regulation will not result in major economic consequences within the meaning of Executive Order 12044. We are presently considering the appropriateness of a regulatory analysis and have invited public comment on this issue.

#### Sectors Affected

This regulation would affect approximately 9,000 units of State and local governments that are involved in law enforcement and related activities, and approximately 1,000 private

entities—such as juvenile homes, educational institutions, public interest groups, and so forth—that participate in activities related to the nation's criminal justice system.

#### Related Regulations and Actions

*Internal:* DOJ regulations under title VI of the Civil Rights Act of 1964, 28 CFR 42.201 *et seq.*

*External:* HEW § 504 Regulations, 42 FR 22676, May 4, 1977.

#### Active Government Collaboration

By virtue of Executive Order 11914 the President has delegated the coordination of government-wide enforcement of § 504 to the Department of Health, Education, and Welfare and has directed that Federal agency regulations under § 504 be consistent with the standards and procedures that the Secretary of HEW has established.

#### Timetable

Public Comment—period ends  
December 21, 1979.

Public Hearing—November 27, 1979.  
Final Rule—May 1980.

#### Available Documents

NPRM—44 FR 54950, September 21, 1979.

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#### DOJ—Immigration and Naturalization Service

Replacement of alien registration receipt cards—requirement for single fingerprint and personal appearance

#### Legal Authority

The Immigration and Nationality Act of 1952, as amended, §§ 103, 262, and 264, 8 U.S.C. §§ 1103, 1302, and 1304.

#### Statement of Problem

Section 262 of the Immigration and Nationality Act, 8 U.S.C. § 1302, which is administered by the Immigration and Naturalization Service (INS), requires every alien in the United States to register, and it also requires that aliens who are fourteen years of age or older be fingerprinted. Section 264 of the Act, 8 U.S.C. § 1304, gives the Attorney General authority to prepare forms for alien registration. The alien registration receipt card, INS Form I-151 or I-551, is the form which aliens who have been registered and fingerprinted under the Act must carry.

Current INS regulations, 8 CFR 264.1(c), set forth the procedures for replacement of alien registration receipt cards. These regulations are geared to the Form I-151, the traditional alien registration document, which is not machine-readable. Applicants for replacement of a lost or destroyed I-151 must submit a completed fingerprint card, Form FD-258, and may be required, as a matter of discretion, to appear in person before an immigration officer to be examined under oath concerning his eligibility for the issuance of Form I-151.

The Service is currently replacing the I-151 as evidence of alien registration with a new, machine-readable I-151, known as the ADIT card. In connection with the issuance of ADIT cards, the INS has been requiring most aliens receiving ADIT cards to appear personally before an INS officer and to have their signature and a single fingerprint collected to appear on the new ADIT card.

The INS proposed rule would amend existing regulations to place these new requirements for the gathering of information for the ADIT card in the regulation relating to replacement of lost alien registration receipt cards. The two principal issues we are considering in connection with this proposed rule are: (1) whether the single fingerprint required for placement on the ADIT card should be collected from children under 14; and (2) whether applicants for replacement cards should be required to appear personally at INS offices to complete the application process.

Fraudulent use of alien registration documents is a growing problem for the United States. It includes the widespread use of counterfeit and altered Alien Registration Receipt Cards, as well as the use of valid cards by imposters to gain fraudulently benefits under the Immigration and Nationality Act. In an effort to counteract this problem, the Service has developed a sophisticated, machine-readable Alien Registration Receipt Card, which is highly resistant to counterfeiting and altering. Imposter use of the new cards is also made more difficult by the fingerprint of the lawful card holder that appears on the card. By comparing the fingerprint on the card to the fingerprint of the person presenting the card, an officer can readily determine if that individual is in fact the lawful card holder. The fingerprint is especially useful in the case of infants and young children. While their facial features change significantly over time, their unique fingerprint patterns do not.

The personal appearance requirement to collect the fingerprint is necessary to

ensure the quality of the fingerprint taken and also to insure that the card will be issued to the individual named in the application.

#### Alternatives Under Consideration

One alternative to this proposal is that no fingerprint be collected for replacement applicants under a certain age. This would, however, undermine the imposter resistance of the Alien Registration Receipt Cards for that population. Without the fingerprint on the card, determining the true identity of the card holder will be more difficult and time-consuming.

Another alternative would be to dispense with the personal appearance requirement for applicants for replacement cards and eliminate the signature and fingerprint on those cards. But personal appearance for a replacement card imposes no greater burden on card applicants than does the regular personal appearance for driver's license renewals. In addition, eliminating the requirement for a personal appearance would further reduce the card's resistance to use by an imposter.

#### Summary of Benefits

The Service anticipates that the proposed rule would not only increase the detection of fraudulent use of Alien Registration Receipt Cards, but also facilitate the bona fide use of such cards by aliens lawfully admitted to the United States.

#### Summary of Costs

Although we cannot anticipate how these changes will affect costs, the current cost to process an application to replace an Alien Registration Receipt Card is \$13.86. In FY 1979, the Service will process approximately 194,000 such applications at an approximate cost to the agency of \$2,689,000. The agency charges a fee of \$10.00 to file most applications for replacement. The total cost to the public in FY 79 for this service was approximately \$1,940,000, and the net cost to the Government is approximately \$750,000.

#### Sectors Affected

This rule will affect permanent resident aliens who seek replacement of evidence of their alien registration.

#### Related Regulations and Actions

*Internal:* 8 CFR 103.7(b); Fee Schedule.  
*External:* None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—November, 1979.  
Public Comment—60 days following NPRM.  
Final Rule—May 1980.  
Regulatory Analysis—not required.  
Final Rule effective—June 1980.

#### Available Documents

None.

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#### DOJ—Law Enforcement Assistance Administration

#### Equal Service Program Guidelines

#### Legal Authority

Crime Control Act, 42 U.S.C. § 3751.

#### Statement of Problem

The Law Enforcement Assistance Administration (LEAA) awards grants to support improvements in all parts of the criminal justice system—police, corrections, courts, probation, parole, prosecution, defense, and juvenile justice agencies.

The nondiscrimination provision of the Crime Control Act, 42 U.S.C. § 3766(c), states that no person may be "excluded from participation in, . . . denied the benefits of, . . . subjected to discrimination under or denied employment in connection with" any LEAA-supported program or activity on the basis of race, color, religion, national origin, or sex. As amended in 1976, the Act requires LEAA to take rapid action to end assistance to recipients who practice such discrimination.

The LEAA Office of Civil Rights Compliance (OCRC) investigates complaints of discrimination and, even in the absence of a complaint, conducts "compliance reviews" of its recipients. OCRC has received an increasing number of complaints alleging discrimination in the services that criminal justice agencies provide to minority groups and women. OCRC has also sought to focus more compliance reviews on recipients' efforts to serve their communities equitably. Investigation of the "services" issue may range from a police department's failure to respond to calls for assistance from a minority neighborhood to a department of corrections' failure to provide the same "halfway house" facilities for women that it does for men. In attempting to investigate these

complaints and conduct these reviews, however, OCRC has found that recipients do not maintain the information necessary to permit LEAA to make a determination of compliance or noncompliance. As a result, LEAA cannot fully implement the nondiscrimination provision in the services area.

#### Alternatives Under Consideration

There are three alternative methods of addressing the problem. LEAA could:

1. establish a guideline broad enough to inform each category of criminal justice recipient, i.e., police agency, court, corrections department, etc., of the type of information LEAA would need to review to determine compliance with 42 U.S.C. § 3766(c);

2. implement an ad hoc method of collecting information tailored to each recipient that would be established after LEAA initiated its complaint investigation, or compliance review, of the recipient;

3. make a decision not to investigate complaints of discrimination in services, or to close all such investigations for "insufficient data."

Options two and three would do little to assist LEAA in eliminating discrimination in services from the criminal justice system. Option two would also be too time-consuming and impractical to administer for a staff as small as OCRC's. The possibility of obtaining the information from another Federal agency that already requires it is not a feasible alternative, because no other agency collects the type of data LEAA needs to review.

Option one is the only alternative that would effectively assist LEAA in implementing the nondiscrimination provision of the Crime Control Act. Administered properly, it would assure LEAA that the information it needed to evaluate a complaint of discrimination would be available for review, and would enable the recipient to quickly and effectively rebut a false charge. The guideline will also be a useful self-examination tool for criminal justice agencies seeking to voluntarily curb discrimination that they might not have previously recognized.

#### Summary of Benefits

The proposed guideline will:

1. greatly improve LEAA's ability to assure that recipients of its funds are not in violation of the nondiscrimination provision of the Crime Control Act,

2. help protect individuals from being subjected to discrimination in violation of the Crime Control Act,

3. reduce the time needed to conduct complaint investigations and compliance reviews,

4. help LEAA recipients defend themselves against baseless charges of discrimination, and

5. give recipients the information they need to voluntarily end discrimination they might not have previously known they were practicing.

#### Summary of Costs

LEAA recipients may incur some indirect personnel costs in developing a mechanism to collect the required data. Those costs should diminish considerably after they have established the mechanism. Because most agencies already collect the data the guidelines would require, it should not be unduly burdensome to them.

#### Sectors Affected

The guideline would affect primarily the criminal justice system throughout the nation. Included in its scope would be police departments (and similar law enforcement agencies such as sheriff's departments, highway patrol, etc.), correctional institutions, criminal courts, juvenile justice agencies, probation and parole agencies, prosecutors, and courts, and public defenders who receive LEAA assistance. It would also indirectly affect people who may be discriminated against by those agencies.

#### Related Regulations and Actions

*Internal:* None.

*External:* LEAA has previously published Nondiscrimination Regulations at 28 CFR 42.201 *et seq.*, and Equal Employment Opportunity Program (EEOP) Guidelines at 28 CFR 42.301 *et seq.* The proposed guideline would seek to collect services information in much the same way that the EEOP Guidelines collect employment information. LEAA will revise the EEOP Guidelines for comment at the same time it proposes the Equal Service Program Guidelines. The anticipated revisions in the EEOP Guidelines will reflect an attempt to streamline and clarify the scope of those requirements.

LEAA will also revise the existing Nondiscrimination Regulations for comment at the same time, for the purpose of defining more precisely what discrimination in services is prohibited.

#### Active Government Collaboration

LEAA will request the views of the Civil Rights Division of the Department of Justice, and give them serious consideration.

#### Timetable

NPRM—November 1979.

Public Comment—until January 1980.  
Final Rule—February 1980.  
Final Rule effective—upon publication as final.

Regulatory Analysis—not required.

#### Available Documents

ANPRM—44 FR 53179, September 13, 1979.

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## DEPARTMENT OF LABOR

### Employment Standards Administration

Proposed amendment to the Sex Discrimination Guidelines (41 CFR 60-20) governing insurance and other employee benefit plans

#### Legal Authority

Executive Order 11246, 30 FR 12319, September 28, 1965, as amended by Executive Order 11375, 32 FR 14303, October 17, 1967.

#### Statement of Problem

Executive Order 11246 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin against any person employed by or seeking employment with Federal contractors or under Federally-assisted construction contracts and establishes affirmative action obligations for Federal contractors and subcontractors. E.O. 11375 added sex as a prohibited basis for employment discrimination and included sex among the bases for requiring affirmative action under E.O. 11246. The sex discrimination guidelines for compliance by Federal contractors with the equal employment opportunity requirements of Executive Order 11246 are in 41 CFR 60-20. They contain a section (41 CFR 60-20.3(c)), which says that with respect to employers' contributions for insurance, pensions, welfare programs, and other similar fringe benefits, the guidelines are not violated where employer contributions for such programs are equal for men and women or where the resulting benefits are equal. On August 25, 1978, the Department of Labor published in the Federal Register proposals to revise both this regulation and the Department's Interpretative Bulletin concerning the Equal Pay Act (for which jurisdiction was transferred to the Equal Employment Opportunity Commission

(EEOC), effective July 1, 1979). The proposals would make clear that any differentials in employee benefits would not be lawful even if unequal employer contributions resulting from sex-based actuarial distinctions—for example, because on the average women's longevity is greater than men's—are necessary to ensure equal benefits. Also, it would not be permissible to require sex-based differentials in employees' contributions to achieve equal benefits. In order to achieve consistency among regulations concerning the equal employment opportunity obligations of employers under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, and E.O. 11246, as amended, modification of this regulation will be necessary. In light of an April 25, 1978 U.S. Supreme Court decision in the case of *Los Angeles, Department of Water and Power v. Manhart*, 435 U.S. 702, it is not realistic to expect that "the equal contributions or equal benefits" rule, in its present form may continue. In the *Manhart* decision, the Supreme Court rules that a city employer's requirement that female employees make larger contributions to its pension fund than male employees because of the longer life expectancy of women as a class discriminated against the individual female in violation of Title VII of the Civil Rights Act of 1964. The Court also ruled that retroactive monetary recovery was inappropriate, because this was the first litigation challenging differences in pension fund contributions based on valid actuarial tables, which fund administrators might have assumed justified the differential; the resulting prohibition against sex-differentiated employee contributions constituted a marked departure from past practice and drastic changes in legal rules can have grave consequences on pension funds.

#### Alternatives Under Consideration

The major areas of scrutiny, given the possibility of revising or clarifying the original proposal, include: (1) whether and how the provision in the Equal Pay Act which prohibits any reduction in the wage rate of any employee in order to comply with that law applies to resolution of the equal benefits issue; (2) the applicability of the proposal to each of the numerous types of fringe benefit plans (e.g., defined benefit pension plans, defined contribution pension plans, health insurance, life insurance, etc.); (3) its applicability to the various options under retirement benefit plans (e.g. straight-life, joint and survivor, early retirement, etc.); and (4) the effective date of the amendments,

including the issue of retroactivity and its effect on accrued or vested benefits.

We will develop alternative approaches to this issue in consultation with other interested agencies.

#### Summary of Benefits

Insofar as the Equal Pay Act precludes compliance from being achieved by means of rate reductions for employees of the higher paid sex where sex-based differentials exist, elimination of the equal cost allowance can be expected to result in increased fringe benefits for female employees—particularly in the area of retirement benefits. Male employees' fringe benefits would also be affected in terms of increased periodic payments to their surviving spouses where such employees choose a joint and survivor pension benefit option that provides the surviving spouse with a continuing payment.

#### Summary of Costs

Employee benefit costs of Federal contractors will be affected by new regulations implementing the *Manhart* decision. We will develop cost estimates in relation to the identification of legally feasible options.

#### Sectors Affected

Modification of this portion of the Department of Labor Office of Contract Compliance Programs Sex Discrimination Guidelines (41 CFR 60-20.3(c)) will apply to Federal contractors and federally-assisted construction contractors.

#### Related Regulations or Actions

*Internal:* None.

*External:* In relation to its assumption of jurisdiction for administering and enforcing the Equal Pay Act, the EEOC has made an interim decision not to adopt as its interpretation of the Equal Pay Act the interpretations which the Department of Labor used in administering that Act (29 CFR 800). The EEOC is studying the question of how to properly interpret the Equal Pay Act in relation to Title VII of the Civil Rights Act, under which it has regulations that also address the subject of equal benefits.

#### Active Government Collaboration

In order to achieve consistency among the Federal regulations concerning the equal employment opportunity obligations of employers under Title VII of the Civil Rights Act, the Equal Pay Act, and Executive Order 11246, as amended, active consultation by the Department of Labor with the Equal Employment Opportunity Commission

will be necessary. The Department of Justice and the U.S. Office of Civil Rights also have an interest in this matter.

#### Timetable

The timetable on finalizing this section of the Office of Federal Contract Compliance Programs Sex Discrimination Guidelines is contingent on EEOC's progress in addressing the complexities involved in articulating appropriate treatment of the equal benefits issue in relation to standards regarding prohibited wage rate discrimination under the Equal Pay Act and Title VII of the Civil Rights Act.

#### Available Documents

Office of Federal Contract Compliance Programs Sex Discrimination Guidelines—41 CFR 60-20.

NPRM—43 FR 38057, August 25, 1978.

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#### DOL—Employment and Training Administration

**Nondiscrimination on the basis of handicap in federally assisted programs**

#### Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794.

Executive Order 11914, 41 FR 17871, Oct. 31, 1976.

HEW Guidelines on Rehabilitation, 3 CFR 308.53.

#### Statement of Problem

The proposed regulations require that all recipients of Federal financial assistance from the Department of Labor ensure that their federally assisted programs and activities are operated without discrimination on the basis of physical handicap. The "recipient" is to operate each program so that when viewed in its entirety, it is readily accessible to the handicapped. In the Fiscal Year 1978, Comprehensive Employment and Training Act (CETA) programs served 178,500 handicapped people, which accounted for 4.3 percent of all participants. United States Employment Services officers served 15.5 million people during this same year, 5 percent of whom were handicapped. Presumably most, if not all, of these people either are not

hindered by architectural barriers or are working or training in facilities that are already physically accessible to them. However, there are undoubtedly a number of people with severe physical handicaps who are not currently using employment and training services because of architectural barriers, but who would avail themselves of these services if they were offered in more accessible facilities. We estimate that an additional 105,000 handicapped individuals potentially could benefit from more accessible employment and training facilities.

The proposed regulations mandate capital expenditures for both the public and private sector. Government agencies which must meet the added cost burden of regulations have few options open to them other than realigning current capital spending plans. Many small employers in private industry may be reluctant to participate in employment training programs because of the potential costs. This would result in the loss of new training opportunities.

#### Alternatives Under Consideration

Possible alternatives to providing accessibility to handicapped people are:

(1) That selected sites be made accessible for all programs;

(2) That selected sites be made accessible but not for all programs.

The first alternative would meet the requirements of "program accessibility" in the proposed regulations, since the primary recipient of Federal financial assistance has the obligation to comply with the legislative mandate.

For programs that are operated by primary recipients, such as CETA On-The-Job training, Job Corps, and Private Sector Initiative, prime sponsors have the responsibility for assuring that programs, when viewed in their entirety, are accessible to handicapped people. Thus, small recipients (or small employers) would be considered to be in compliance with this requirement even if each individual site was not accessible.

In the case of Job Corps, it is inaccurate to consider each individual center as a separate program or recipient of Federal financial assistance. Congress, when it established the Job Corps in 1964, stated that it was a national program with program operating authority centralized at the Federal level. This being the case, Job Corps can comply with the requirements of § 504 by designating regional centers that will serve both handicapped individuals who need specialized services and nonhandicapped individuals.

The second alternative suggests that in Private Sector Initiative Programs and On-The-Job training programs that were established under the Comprehensive Employment and Training Act Amendments of 1978, the phrase "when viewed in its entirety" be applied to specific occupations in these programs. Training need not necessarily be available at each site within each occupation. But each prime sponsor has the responsibility to assure that "viewed in its entirety" specific occupations are accessible.

#### Summary of Benefits

Preliminary estimates show that an additional 105,000 handicapped individuals potentially could benefit from more accessible employment and training facilities. This estimate is based on an updated 1974 Survey of Disabled and Nondisabled Adults. This survey included the severely and partially disabled, handicapped who use the following aids—wheelchairs, braces, crutches, and artificial limbs—and who are able to go out of doors without help. The survey shows in addition to 40,000 unemployed, about 115,000 severely disabled and 25,000 partially disabled people are not in the labor force. It is estimated that 40,000 severely disabled and all of the partially disabled may be employable and thus benefit from CETA programs. Thus, we estimate that there will be about 105,000 additional handicapped people who could benefit from more accessible employment and training facilities.

We recognize that some people with severe physical handicaps may not be able to use employment and training facilities even when they are accessible, and that other potential beneficiaries may opt for updated Veterans Administration and Vocational Rehabilitation Administration alternatives which provide specialized rehabilitation services in addition to skill training.

#### Summary of Costs

Overall, preliminary estimates are that the capital costs of making employment and training programs accessible under the proposed regulations (alternative 2) would amount to \$128 million.

Under a more restrictive interpretation of program accessibility in the Private Sector Initiative Program (PSIP) and the On-The-Job (OJT) training program, total costs could be as high as \$280 million (alternative 1). In this context, this could mean that selected sites must provide "program accessibility" for PSIP, OJT, and Job Corps, possibly in every occupational

grouping. While a thorough analysis of accessibility costs would require an architectural survey of all existing facilities, we developed a maximum cost figure by estimating the number of intake centers based on the type and size of prime sponsors, and the number of work and training sites based on the number of participants. All applicants must have access to CETA Intake Centers. A reasonable assumption is that not all of these intake centers are in compliance; therefore, some will need only minor modifications and others more extensive modifications. Most sponsors would have at least one CETA Intake Center. We estimate the total number of such centers to be 1,036.

The total number of intake centers and training sites was reduced by the percent of facilities estimated to be currently in compliance with the proposed regulations. The following table presents a summary of capital costs, disaggregated by program activities.

1 State Employment Security Agencies (SESA)	\$6,000,000
2 Comprehensive Employment and Training Act (CETA) Intake Centers	
Minor modifications	\$388,000
Major modifications	\$5,633,000
CETA Employment and Training Facilities:	
3 Classroom Training	\$4,900,000
4 Public Service Employment and Work Experience	\$55,338,000
5 Youth Programs	\$28,531,000
6 On-the-Job Training	\$12,050,000
Private Sector Initiative program	\$15,000,000
<b>Total</b>	<b>\$127,650,000</b>

Additional costs under a more restrictive interpretation (alternative 1): "that selected sites be made accessible for all programs" provides for the most extensive modification in all program areas. This means that programs must be made accessible to handicapped people at selected Job Corps Centers and selected job sites for OJT and PSIP programs. It may also mean fewer training opportunities, since small employers (small recipients) may elect not to participate in the CETA program because of the exorbitant cost of making each site accessible. We estimate these costs at:

OJT	\$42,937
PSIP	\$53,437,000
PSE and WE	\$55,337,000
<b>Total</b>	<b>\$151,711,000</b>
<b>Total (Alternative 1)</b>	<b>\$279,561,000</b>

#### Sectors Affected

The population that this regulation will affect consists of people participating or wishing to participate in programs funded by the Department of Labor who are handicapped as defined

in the Rehabilitation Act of 1973. Handicapped people are, by and large, concentrated in larger industrial States.

There are more than 450 prime sponsors, or recipients of Federal funds who administer the Comprehensive Employment and Training programs. A prime sponsor may be a State, a unit of general local government which has a population of 100,000 or more, or a consortium of units of local government. We estimate the number of training sites provided by these prime sponsors to be 315,000. Recipients under CETA are people, organizations, or units of government who receive Federal funding to administer their programs.

#### Related Regulations and Actions

*Internal:* Department of Labor (DOL)—Comprehensive Employment and Training Act Regulations (20 CFR 675, 676, 677, 678, and 679).

DOL—Affirmative Action Obligation of Contractors and Subcontractors for Handicapped Workers (41 CFR 60-741).

DOL—Executive Order 11758, which in part delegated authority to the Secretary of Labor for implementing § 503 (a) and (c) of the Rehabilitation Act of 1973.

DOL—Regulation issued pursuant to § 503 of the Rehabilitation Act of 1973 (41 CFR 60-741).

*External:* Health, Education and Welfare (HEW)—Regulations (45 CFR 84) issued by DHEW covering its own grant programs.

HEW—Executive Order 11914, which requires DHEW to coordinate the Government-wide enforcement of § 504 of the Rehabilitation Act.

HEW—Federal Agency Coordination Guidelines (45 CFR 85).

The Architectural and Transportation Barriers Compliance Board (ATBCB) was established under § 502 of the Rehabilitation Act of 1973, P.L. 93-112, 87 Stat. 391, § 502(d), 29 U.S.C. § 72(d), which provides that the ATBCB shall hold hearings and issue orders it deems necessary to ensure compliance with the standards of building and facilities issued under the Architectural Barriers Act of 1968.

#### Timetable

NPRM—November 1979.

Public Comment—two weeks following NPRM.

Final Rule—December 1979.

Final Rule effective—spring 1980.

Regulatory Analysis—November 1979.

#### Available Documents

NPRM—Publication in November Register; date not available at time of publication.

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### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained**

#### Legal Authority

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, § 709(c), 42 U.S.C. Sec. 2000e-8(c).

#### Statement of Problem

Employers, labor organizations, State and local governments, and educational institutions presently collect and maintain equal employment opportunity data on an annual basis only. The Equal Employment Opportunity Commission (EEOC), therefore, is unable to identify persons who have been discriminated against if the discrimination took place more than a year prior to the report and investigation of the act. Under the proposed recordkeeping regulations, the EEOC's reporting requirement will require that institutions preserve employment applications for at least two years or until the end of a Commission action or court proceeding.

#### Alternatives Under Consideration

There are no alternatives under consideration. This is a revision of existing regulations to further EEOC's enforcement capabilities and to create uniform recordkeeping requirements. At present, the Commission is using a non-regulatory approach. In some instances the Commission, as a result of court actions, publishes "ads" in newspapers or uses other search methods to identify people who may have been discriminated against. None of the present approaches is completely satisfactory, and the Commission believes that requiring certain records to be kept for a longer period is a more efficient method to aid in identifying people who have been the victims of discrimination.

#### Summary of Benefits

Extending the length of time for maintaining data on employment applications will benefit the

Commission and the victims of discrimination by allowing the Commission to secure specific and more adequate redress for the victims of discriminatory hiring or referral practices, especially in cases involving employment systems which exclude women and minorities.

#### Summary of Costs

The Commission believes the compliance cost of these regulations will be minimal. This opinion is based on the following rationale:

1. The vast majority of medium-sized and large employers that these regulations cover have personnel departments or offices where people make formal written application for work or submit resumes in response to Help-Wanted Advertisements. In most cases, this data is already kept on file for a certain period. The requirements to maintain data on applicants for a longer time should, therefore, not require any business to increase the personnel who process application data.

2. Since private employers and labor unions covered by Sec. 709(c) of Title VII of the Civil Rights Act of 1964, as amended, are currently required to maintain applications and other records for a period of six months, the requirements of these regulations to maintain those records for an additional 18 months will not impose an additional significant burden upon those private employers and labor unions.

3. State and local governments, public elementary and secondary schools, and all private and public institutions of higher education keep equal employment opportunity (EEO) information for three years. Our proposed regulations require them to do this for only two years. Our current regulations already require these employers to maintain for two years the applications and resumes submitted by prospective employees. This will remain unchanged.

#### Sectors Affected

These regulations apply to specified employers, labor organizations, State and local governments, and educational institutions, as follows:

1. employers whose workforce is 100 employees or more,

2. joint labor-management committees which control apprenticeship programs that have five or more apprentices enrolled in the program at any time during August and September of the reporting year and represent at least one labor organization sponsor that is covered by Title VII of the Civil Rights Act of 1964,

3. labor organizations that have 100 or more members at any time during the twelve months preceding the due date of the report and are "local unions" (as that term is commonly understood) or independent or unaffiliated unions,

4. State and local governments and every political jurisdiction with 15 or more employees,

5. public and private elementary and secondary school systems and districts with 15 or more employees,

6. institutions of higher education, whether public or private, with 15 or more employees.

#### Related Regulations and Actions

*Internal:* Existing EEOC regulations involving reporting and recordkeeping; employer information report and recordkeeping; apprenticeship information report and recordkeeping; State and local governments' information report and recordkeeping; elementary-secondary school systems, districts, and individual schools' recordkeeping; higher education information report and recordkeeping. (All in 29 CFR 1602.)

*External:* We submit our reporting forms for approval to the Office of Management and Budget annually. Most EEO reporting forms are designated to be used jointly with other Federal agencies (e.g. the EEO-1 report form is a joint form with the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the EEO-5 report form is a joint form with the Department of Health, Education and Welfare's Office for Civil Rights and the National Center For Education Statistics).

#### Active Government Collaboration

The Commission held public hearings on the proposed regulations on September 21, 1978. Prior to the public hearing EEOC met with OFCCP to discuss the proposed regulations. The Commission received and is considering comments from the United States Civil Service Commission and OFCCP. The Commission also sent copies of the proposed regulation to all State and local Fair Employment Practices agencies for comment.

#### Timetable

Final Rule—Spring 1980.

Regulatory Analysis—not required.

#### Available Documents

29 CFR 1602, "EEOC Reporting and Recordkeeping."

NPRM—43 FR 32280, July 25, 1978.

"EEOC Report on the Determination of Non-Requirement for Regulatory

Analysis of Amendments to 29 CFR 1602."

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#### GENERAL SERVICES ADMINISTRATION

#### National Archives and Records Service

Freedom of Information Act requests  
for national security classified  
information in the National Archives

#### Legal Authority

Freedom of Information Act, 5 U.S.C.  
§ 552, Executive Order 12065, 43 FR  
28949, June 28, 1978.

#### Statement of Problem

Researchers and other persons seeking access to records of Federal agencies under the Freedom of Information Act direct their requests to the agency which has custody of the records. The National Archives and Records Service (NARS) of the General Services Administration (GSA) acts as custodian of non-current records of Federal agencies, including records classified for reasons of national security. People requesting access to classified information held by NARS also submit to NARS requests for declassification of the information. For records more than 30 years old, NARS is authorized to declassify the information. If a request is for classified records less than 30 years old, NARS forwards the request for declassification to the agency with declassification authority (usually the originating agency), and that agency decides whether to declassify the requested information. The Freedom of Information Act requires NARS to notify the requestor of a denial of access, while NARS' current regulations can be interpreted to allow agencies with declassification authority to inform requestors directly of denials of declassification. As a result, NARS is sometimes not notified of the other agency's declassification decision, while at other times the requestor may receive duplicate notices from the other agency and from NARS.

#### Alternatives Under Consideration

The proposed regulation changes the current procedure so that agencies with declassification authority would notify

NARS of decisions about declassification and NARS would in turn notify the requestor. Our alternative would be to keep the current procedure.

#### Summary of Benefits

If NARS changes the regulation, people requesting access to national security classified information will maintain direct contact with the agency which has physical custody of the records and will receive notices only from that agency. We expect that this "single point of contact" approach will be less confusing to persons requesting information.

#### Summary of Costs

The proposed regulation has no direct costs. It may cause slight indirect cost savings to other government agencies by reducing duplication of notices of denial. NARS estimates that it receives between one hundred and two hundred requests per year for classified information. Not all of these requests lead to duplicate notices. NARS does not know the cost to other agencies of sending notices.

#### Sectors Affected

The regulation has a direct effect on people requesting access to national security classified information under the Freedom of Information Act.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—late 1979.

Public Comment—60 days following NPRM.

Final Rule—March 1980.

Regulatory Analysis—not required.

#### Available Documents

Public Use of Archives and FRC  
Records, 41 CFR 105-61.

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**VETERANS ADMINISTRATION**

**Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance**

**Legal Authority**

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794. Executive Order No. 11914, 41 FR 17871, April 29, 1976. HEW Guidelines on Rehabilitation, 3 CFR 308.53.

**Statement of Problem**

The proposed regulations will define and prohibit acts of discrimination against qualified handicapped people in employment and in the operation of programs and activities receiving assistance from the Veterans Administration. The nondiscrimination requirements will extend to the entire range of the medical care, rehabilitation, education, housing, and other programs of the Veterans Administration. If the Veterans Administration finds incidents of discrimination it may seek to resolve them by requesting voluntary compliance, by terminating financial assistance, or by other means that may be available under appropriate law.

**Alternatives Under Consideration**

This regulation will implement the requirements of the Rehabilitation Act, Executive Order No. 11914, and HEW Guidelines on Rehabilitation. These requirements provide no alternative for consideration.

**Summary of Benefits**

This regulation will help clarify and protect the rights of the handicapped in employment and in the operation of programs and activities receiving assistance from the Veterans Administration.

**Summary of Costs**

We believe that the cost to the VA of complying with this regulation will be minimal. The greatest cost to recipients of VA funds may be involved in making structural changes to buildings in order to allow access for the handicapped. In those cases we expect to follow the guidelines established by the Department of Health, Education and Welfare.

**Sectors Affected**

This regulation will affect all programs and activities receiving funds from the Veterans Administration, either directly or through their participants. These may include institutions receiving VA grants for education or research; educational institutions whose students

receive VA educational benefits; financial institutions participating in VA home, farm and business loan programs; and employees and institutions participating in VA employment and training programs.

**Related Regulations or Actions**

*Internal:* None.

*External:* Department of Health, Education, and Welfare, "Nondiscrimination on Basis of Handicap, Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 3 CFR 308.53.

**Active Government Collaboration**

VA's regulations will be similar to those issued by HEW, except as necessary to meet specific VA organizational, procedural, or program requirements. We expect to divide the enforcement responsibility between the VA and HEW to eliminate duplication. This would parallel the delegations of responsibility with regard to Title VI of the Civil Rights Act of 1964, where HEW is responsible for institutions of higher learning, public schools, hospitals, and other health facilities, and the VA is responsible for proprietary schools (privately owned schools).

**Timetable**

**Final Rule—February 1980.** The Veterans Administration expected to publish the final rule in February 1979, but the subject of this regulation was affected by related legislation and court decisions. HEW, who has the lead responsibility in this area, is revising its guidelines. Depending on the extent of this revision, the Veterans Administration will publish either the final rule or a new NPRM.

**Regulatory Analysis—**not required.

**Available Documents**

NPRM—43 FR 19166, May 3, 1978.

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**Chapter 5—Trade and Commerce**

USDA-AMS	
Proposed Federal Milk Order for Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho).....	68318
USDA-AMS	
Amendments to Federal Seed Act Regulations.....	68320

USDA-FSQS	
Proposed Nat Weight Regulations .....	68321
TREAS-ATF	
Advertising Regulations under the Federal Alcohol Administration Act.....	68323
Partial Ingredient Labeling of Wine, Distilled Spirits, and Malt Beverages.....	68324
Revision of the Distilled Spirits Tax System.....	68325
Unlawful Trade Practices under the Federal Alcohol Administration Act.....	68326
FTC	
Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Reimbursement Plans.....	68328
Mobile Home Sales and Service Trade Regulation Rule .....	68330
Proposed Trade Regulation Rule (TRR) on Standards and Certification (43 FR 57269, December 7, 1978).....	68331
Rulemaking on Children's Advertising.....	68334
Trade Regulation rule Concerning Credit Practices....	68336

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**Proposed Federal milk order for the Southwestern Idaho-Eastern Oregon marketing area (Boise, Idaho)**

**Legal Authority**

Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 *et seq.*

**Statement of Problem**

Under the Agricultural Marketing Agreement Act, the U.S. Department of Agriculture (USDA) is vested with authority to issue milk marketing orders designed to stabilize marketing conditions in cases where disorderly marketing conditions exist.

In September of 1978, three dairy cooperative associations in the Boise, Idaho area proposed that USDA undertake the process of instituting a milk marketing order for that area. Their proposal entailed a complete order to regulate the handling of milk in 18 southwestern Idaho and 5 eastern Oregon counties. The purpose of such an order would be the establishment of stable and orderly marketing conditions for producers and the assurance for consumers of an adequate supply of fluid milk at reasonable prices.

The USDA in turn invited alternative proposals to that suggested by the three dairy cooperative associations. Subsequently, a public hearing was announced (in October of 1978) and held over the period December 5-8, 1978 in Boise to consider testimony regarding reasons for establishing an order and its specific provisions.

The recommended decision, based on the hearing evidence and published in the Federal Register on August 16, 1978, stated that dairy farmers supplying the marketing area under consideration were not experiencing disorderly

marketing conditions (e.g., handlers cutting producer prices, certain producers closing their market, and a disproportionate sharing among producers of the market's surplus milk) to an extent warranting Federal intervention in the region. Thus the recommended decision was to not issue an order—not to regulate.

Significant objections to the recommended decision were received by USDA and the time for filing exceptions to the decision was extended to October 31, 1979. The Department is currently carefully considering those objections prior to arriving at a final decision regarding issuing an order.

The detailed findings and conclusions of the Department are stated in the recommended decision which was published in the Federal Register (Part III) of August 16, 1979 (44 FR 48128).

#### Alternatives Under Consideration

(1) Issuing a milk marketing order for the Boise, Idaho area to establish, by regulation, formula prices for milk by class of use.

(2) Relying on existing marketing arrangements (i.e., not issuing an order).

The Department considers proposals initiated by milk producers, normally through their cooperative associations, and/or by other parties, rather than initiating proposals of its own.

Three cooperative associations representing producers proposed the Boise, Idaho order. Their proposal represented a complete order to regulate the handling of milk in 18 southwestern Idaho and 5 eastern Oregon counties. It included definitions for determining which plants would be pool plants, (i.e., fully regulated plants). A pool distributing plant would be one that disposed of 50 percent or more of its total milk receipts on routes, with 10 percent or more of the distribution in the marketing area. A pool supply plant would be one that transferred 50 percent or more of its Grade A milk receipts from dairy farmers to pool distributing plants. Plants that distributed less than the standards proposed would not be fully regulated, but they would be affected by provisions relating to partially regulated plants. The class prices applied to the classified use plan would include a Class I milk price computed at the level of the Minnesota-Wisconsin price for the second preceding month plus \$1.75 per hundredweight. The Class II price would be the Minnesota-Wisconsin price for the month plus 10 cents per hundredweight. The Class III price would be the Minnesota-Wisconsin price for the month. The Minnesota-Wisconsin price is a price computed

each month by the Economics, Statistics and Cooperatives Service of the USDA. It represents an average of the prices paid for milk at unregulated manufacturing plants for Grade B milk in the two states.

As stated in the Agricultural Marketing Agreement Act (7 U.S.C. § 601 *et seq.*), the declared purpose of the Act is "to establish and maintain such orderly marketing conditions . . . as will establish . . . [prices which] are reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions, [and which will] insure a sufficient quantity of pure and wholesome milk, and be in the public interest."

#### Summary of Benefits

The benefits of an order would be stable and orderly marketing conditions for producers in some Oregon and Idaho counties, improvements in returns to producers in accord with the statutory standards, and the assurance for consumers of an adequate supply of milk at reasonable prices.

#### Summary of Costs

The costs associated with these benefits are administrative assessments (not more than 5¢ per hundredweight—perhaps \$10,000 per month) against the regulated processors, which are billed to the handlers, to cover the expenses of USDA administering and operating the marketing order.

The Department, in arriving at its tentative determination not to issue a milk order, indicating the following:

Even with a Class I differential of \$1.50, which the record suggested might be appropriate, which probably would represent no increase in the cost of Class I milk for the market, any increase in weighted average returns to producers likely would be minimal. It would not be appropriate to establish a federal milk order, with attendant costs, when marketing conditions for producers would not be improved substantially.

#### Sectors Affected

If established, the regulations would apply directly to the fluid milk handlers and processors for the benefit of local dairy producers. Consumers would be indirectly affected by changes in prices occurring under the pricing formula in the order and probably pass-through of administrative costs associated with operating the marketing order. Distant dairy producers might be affected indirectly to the extent that market regulation in this area affected the stability of the total milk supply. Some distant producers might be directly

affected if they marketed milk in the regulated area.

Under marketing orders, all producers tend to share more equally in the market than they would in the absence of regulation. However, cooperative marketing arrangements among farmers may accomplish the same objective in the absence of regulation.

#### Related Regulations and Actions

*Internal:* There are 47 Federal milk orders in operation. In 1978, 119,398 producers delivered 78 billion pounds of milk to 1,187 milk handlers. Forty-one billion pounds, or 53 percent of the deliveries were used in Class I—packaged for fluid milk consumption, on which marketing orders focus. The milk deliveries represented two-thirds of all milk marketed by the nation's dairy farmers.

*External:* Agencies of State governments define, by sanitary handling conditions and product description, that milk which can qualify as Grade A or suitable for fluid consumption. (All Class I milk must be Grade A).

#### Active Government Collaboration

None.

#### Timetable

A final decision may be issued sometime in December 1979. A regulatory analysis will be prepared as part of the final decision.

#### Available Documents

Notice of Hearing issued October 19, 1978, published in the Federal Register—43 FR 49704, October 24, 1978.

Corrections (procedural): 43 FR 50187, October 27, 1978, and 43 FR 52496, November 13, 1978.

The record of the hearing, held in December of 1978, in Boise, Idaho, and of public comments received prior to October 31, 1979, are on file with the Hearing Clerk, U.S. Department of Agriculture under Docket No. AO-380.

Recommended Decision "Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Marketing Agreement and Order" issued August 13, 1979; published in 44 FR 48128, August 16, 1979.

Extension of Time for Filing Written Exceptions to the Recommended Decision, issued September 14, 1979, published in 44 FR 54303, September 19, 1979. The public had until October 31, 1979 to submit written comments on the recommended decision.

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**USDA-AMS****Amendments to Federal Seed Act regulations****Legal Authority**

Federal Seed Act of 1939, 7 U.S.C. § 1551 *et seq.*

**Statement of Problem**

The Federal Seed Act (FSA) is designed to protect farmers and other consumers who buy seed that is sold across State lines or is imported. The Act requires labeling of all such seed, prohibits false labeling and advertising, and prohibits importation of uncleaned seed, seed with low germinating levels, and seed containing noxious-weed seeds. The U.S. Department of Agriculture (USDA) and State governments cooperate in enforcing the Act. USDA is now reviewing and revising existing regulations used to administer the Federal Seed Act. USDA will repromulgate these regulations, as amended, so as to provide up-to-date rules for testing seed, improve standards for certified seed, change rules for sampling new and different containers, and clarify definitions and other provisions in light of current marketing practices.

Specific problem areas are:

(1) Handling complaints promptly. USDA investigates and takes action on complaints of alleged violations of the Federal Seed Act, mostly from State seed regulatory agencies that cooperate with USDA. Slow action draws criticism from State agencies and the seed dealers being regulated.

(2) Enforcing seed laws uniformly. Variability of State programs and unequal cooperation by State agencies results in unequal administration of the Federal law.

(3) Sampling of imported seeds. Customs agents sample the seed at the ports of entry and forward the samples to USDA seed laboratories. USDA tests the samples and admits or rejects the seed. Failure to sample, misidentification of samples of seed, or delays in sampling affect the efficiency of the program.

(4) Regulating labeling of seed varieties. The Act requires labeling and prohibits false labeling. With some seeds, it is impossible to identify the variety by seed characteristics; it is

necessary to subject them to special biochemical tests or grow them in field plots to differentiate varieties. Some seedsmen question the methods used and the interpretations of their results.

**Alternatives Under Consideration**

USDA held public meetings in September in Memphis and Denver, and invited all interested parties to express their views on the effect this Act has on their business practices. When USDA has evaluated this new information, it should provide guidance for possible alternative strategies.

They are:

(1) No change in the regulations. The current regulations explain the requirements of the Act, add definitions, specify kinds of seed that are subject to the Act, prescribe rules for sampling and testing, and set forth standards for certain purposes. Possible advantages of this alternative are consistency (status quo), avoidance of controversy, and no cost to change.

(2) Amend the regulations to make possible improvements in the current system. USDA expects many changes to have the support of all affected parties. Others will be controversial in that not everyone will agree on what changes ought to be made. Hearings will air controversial issues and will, hopefully, shed light on suitable solutions. The regulations need to be updated to adopt new technology in packaging, testing, and marketing. Technical bodies of the State agencies have recommended to USDA changes in the technical rules for testing and standards for certified seed. Some of the contemplated amendments would change the Federal regulations to agree more closely with State requirements. Other changes would become models for changes in State regulations. Most interested parties urge uniform regulations.

(3) Amend authorizing legislation to change the mandate for regulations, such as: delete certain sections of the law completely; change the approach from "truth-in-labeling" to grades or permits; or require compulsory inspection before marketing. The current system is a truth-in-labeling and spot-check-inspection system. It is not perfect. Cost-benefit analysis may justify the current inspection system. The freedom to produce and distribute seeds without inspection or constraint simplifies the distribution system and minimizes the regulatory burden. On the other hand, the current system may not suffice to protect consumers from faulty seed which may cause crop losses. A farmer's crop may be lost before the fault in the seed is detected. Premarket

inspection and a pedigree system might reduce errors.

**Summary of Benefits**

Revised regulations would improve compliance because improving the wording of the regulations would minimize misunderstandings. USDA would be able to handle complaints more promptly and avoid the problems of currently drawn-out proceedings, and thus improve relations with the State agencies and seed dealers at all marketing levels. The cooperative agreements with the States would be more effective under improved regulations, which would help overcome unequal enforcement in the States. Adoption of new rules for sampling and testing seed and changes in standards for certified seed would promote uniformity in seed regulations and the administration of seed law. Also, changing lists of noxious-weed seed for imported seed to agree with regulations under the Federal Noxious Weed Act (administered by Animal and Plant Health Inspection Service—APHIS) would facilitate cooperation between the two agencies, APHIS and AMS, for the inspection of imported seeds and commodities infested with weed seed. It may be possible and advantageous to relieve Customs officials of the burden of sampling imported seed.

**Summary of Costs**

The Federal Seed Act appropriation USDA requested for FY 1980 is about \$1.4 million. USDA will incur only minor administrative costs by improving the wording of the regulations. However, the Department may need additional Federal funds for seed inspection and testing, ranging from about \$300,000 to \$5 million annually, depending on the type of testing or inspection it uses to assure truthful labeling. If seed inspection is improved in States that are not cooperating, then Federal cost increase will be minimal, but if Federal inspection is necessary in States that are inactive, the costs will be high. We do not know what States spend now or what increased costs the States would have if activity were changed. The seed dealers are now required to label seed, and the changes that can be made in the regulations without basic statutory change should not create a significant change in costs to seed dealers. USDA contemplates no changes that would create a cost burden to the industry. Pass-through costs to consumers for the amendments contemplated would be minimal, because there would be minimal additional burden or cost to seedsmen. Transferring the sampling of imported seeds from Customs to USDA

responsibility probably would not result in a shift of funds from Customs to USDA, because sampling seed comprises only a small portion of Customs inspectors' time and cost. No significant increase in cost to USDA is anticipated.

#### Sectors Affected

The changes under consideration would affect all segments of the seed industry either directly or indirectly. They would directly affect State regulatory services, State seed certifying agencies, seed growers, shippers in interstate commerce, importers of seeds, and USDA. They would indirectly affect farmers, gardeners, and consumers. The changes may not affect small businesses any differently than big businesses, because all seedsmen must test and label seed according to the regulations and the cost of adhering to the law is proportionate to the volume of seed handled.

#### Related Regulations and Actions

*Internal:* USDA has referred a bill to amend the Federal Seed Act to the Congress, but the bill has not been actually introduced. It may be withdrawn by USDA, however, pending completion of a detailed study of the program by a university professor. The contemplated amendments to the regulations would not be contrary to the proposed amendments to the Act that USDA is considering. They are intended to clarify wording, update certain provisions, and delete provisions that are obsolete or unnecessary.

The Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*) that this Agency administers interacts with the FSA in certain instances regarding determination of variety status and prohibition of selling certain protected varieties unless the seed is certified.

Seed imports that are subject to the Federal Seed Act are inspected by AMS under that Act for noxious weeds. Imports of all other commodities must be inspected for certain weed species under the Federal Noxious Weed Act (7 U.S.C. § 2321 *et seq.*), which APHIS administers. AMS has held informal discussions with APHIS regarding cooperative inspection of imported seed and identification of weed seeds in other commodities.

*External:* State seed laws and regulations are similar to but not required to conform with the Federal Seed Act.

#### Active Government Collaboration

AMS has already worked with State regulatory agencies in developing ideas for the proposed amendments and will

continue to develop a coordinated set of regulations. AMS has also been in communication with the Bureau of Customs, Department of the Treasury in connection with import sampling matters.

#### Timetable

USDA has recently requested initiation of a study to evaluate the Federal Seed Act. If the Department decides to amend the regulations, the following estimated dates are applicable:

NPRM—summer 1980.

Public Comment—following NPRM.

Public Hearing—following NPRM.

Final Rule for changing the regulations—fall 1980.

Regulatory Analysis—will be prepared as part of the rulemaking process.

Final Rule effective—January 1981.

#### Available Documents

Available from the Agency Contract below.

Backgrounder: "Public meetings on the Federal Seed Act," August 1979.

Federal Seed Act and regulations.

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#### USDA—Food Safety and Quality Service

#### Proposed net weight regulations

##### Legal Authority

Federal Meat Inspection Act, 21 U.S.C. § 453(h)(5) *et seq.*

Poultry Products Inspection Act, 21 U.S.C. § 343(e) *et seq.*

##### Statement of Problem

The present Federal regulations concerning net weight for meat and poultry products permit "reasonable variations" in weight caused by the loss or gain of moisture during distribution. In October 1977, the State of California filed a petition with the United States Department of Agriculture (USDA) requesting new regulations which would permit States and municipalities to enforce strict standards at the time of consumer purchase. Officials of 47 other States, several farm organizations, and consumer groups co-signed the petition.

According to the petition, the Supreme Court decision in *Rath Packing Company v. M. H. Becker, et al.* in

March 1977 had left States without adequate authority to enforce their own net weight regulations. The Court had held that States and municipalities were preempted from enforcing standards that were stricter than Federal regulations, which are based on "reasonable variations." Since the term "reasonable variations" does not provide a quantifiable standard, the petition contended that States and municipalities were, in effect, precluded from enforcing net weights at retail.

In addition, consumers have complained that net weight statements on packages of meat and poultry do not provide accurate information on the amount of usable product in the package. Present USDA regulations now require that net weight statements be accurate only at the time they leave the plant and not at the time food is purchased by consumers. The present regulation also counts free liquid as part of the net weight. (Free liquid is liquid that has seeped out of a product into the package but has not been absorbed by the packaging material). As a result of moisture loss and free liquid, consumers have frequently complained that they have no way of knowing how much usable product they are getting for their money.

In response to the California petition and consumer complaints, the Food Safety and Quality Service (FSQS) published proposed Federal net weight regulations on December 2, 1977. The principle features of the proposal were as follows:

- Free liquids, as well as liquids, fats and solids absorbed by packaging material, would be excluded from a product's net weight. Thus, net weight would be based on a drained weight system, as opposed to a wet tare or dry tare. (Tare is the quantity subtracted from gross weight to determine net weight). Under a wet tare, net weight equals package and contents minus the weight of the packaging material and liquids absorbed by the packaging material. (Free liquid is included in the net weight). Under a dry tare, net weight equals package and contents minus the weight of the dry packaging material (again, free liquid is included).

- The present allowance for moisture loss due to evaporation during distribution would be eliminated. The average weight for products from the same lot would be required to equal or exceed the labeled net weight. Single packages, however, would be permitted actual weights below the labeled weight by a specified amount.

- Federal net weight standards would be established for bulk shipments or wholesale-sized packages.

• An FSQS approved quality control program for net weight would be required at most Federally inspected meat and poultry plants.

After the proposal appeared in the Federal Register, USDA received over 3,000 comments, indicating widespread disagreement concerning the need for the new regulations and their economic impact. Since the closing of the comment period, FSQS has commissioned two economic studies. The first, "Analysis of Proposed Regulations on Net Weight Labeling" (October 1978), was carried out by the Consumer Federation of America.

The second of these, "Assessment of Proposed Net Weight Labeling Regulation," conducted by USDA's Economics, Statistics, and Cooperatives Service (ESCS), was made available for comment on August 31, 1979. The comment period closed on October 30, 1979.

#### Alternatives Under Consideration

The comments on the ESCS study will have a significant bearing on the available alternatives. FSQS now appears to have four alternatives:

(1) Retain the present regulations. This appears to be the least likely course, simply because of the clearly expressed views of the States in favor of new regulations that will give them an enforceable standard at retail.

(2) Publish the December 2, 1977 proposal as a final regulation, with only nonsubstantive changes. This, too, does not appear to be a strong possibility. Over the past year, USDA officials have held a series of meetings with Food and Drug Administration (FDA) officials to develop a consistent Federal approach on net weight regulations for all food. (FDA has authority over all food except meat and poultry). The agreements that have been reached in these meetings would involve substantive changes in USDA's December 1977 proposal and, therefore, would make it necessary to repropose rather than going ahead with final regulations.

(3) Publish a new proposal that would incorporate the agreements reached with FDA, but that would leave most other portions of the December 1977 proposal unchanged.

(4) Publish a new proposal that incorporates the agreements reached with FDA, as well as other changes designed to reduce the costs to industry and keep enforcement costs to States and localities to a minimum. (For example, the drained weight system might be changed to a wet tare or dry tare system). This appears now to be the most likely alternative. It would make use of the ESCS findings on the

economic impact of the December 1977 proposal.

#### Summary of Benefits

According to the ESCS study, there would be three benefits to establishing a more objective (or quantifiable) Federal net weight standard.

First, consumers would benefit from more accurate net weights at retail. In buying a chicken, ground beef, or bacon, a consumer will almost always look at the price per pound. Without accurate information on the weight of the product, however, shoppers cannot make accurate price comparisons. With an objective standard, enforceable at retail, consumers would be in a better position to make price comparisons.

Second, there would be more accurate information on meat and poultry products at all points in the distribution and marketing chain. For example, the buyers of bulk-packed products would have a clearer standard for checking the weights of shipments they receive. Such a standard would be helpful, particularly to small volume buyers who may now be reluctant to adjust invoices to correct for underweight shipments.

Third, because States and municipalities would have more enforceable standard at retail, the risk of deliberate fraud would be reduced. Although ESCS' study found no evidence of consistent or flagrant short-weighting of meat and poultry products now in the marketplace, State officials have stated that it could occur unless there is an enforceable Federal standard in place.

#### Summary of Costs

The ESCS study predicts that the labeled price per pound for some products would increase under the December 1977 proposal, but that there would be no real cost increase for consumers, because they would be receiving more usable product at the higher price. Similarly, producers would have to include more product in packages to compensate for the stricter standard, and thus would incur additional costs per package. However, these costs would be offset by the increase in the labeled price per pound. Thus, a stricter standard, by itself, would result in no additional real costs to either industry or consumers.

The quality control requirements would result in additional personnel (operating) costs of \$57 to \$114 million to industry, according to the ESCS study. Capital cost to industry would be less than \$2 million, according to the study. Under alternative (4), the quality control portion of the proposal would not be included.

The additional costs of the 1977 proposal (alternative #2) to State and local governments would be about \$500,000. Most of these costs would be in new equipment to enforce a drained weight system. If the proposal were changed to a wet tare or dry tare system under alternative (4), almost all of the additional costs to State and local governments could be avoided.

#### Sectors Affected

The entire distribution and marketing chain for meat and poultry would be affected by the proposed regulations. Most producers would be affected more than retailers, since they would have to take into account weight over a longer period of time (between packaging at the plant and consumer purchase, or between packaging at the plant and repackaging by a wholesaler or retailer). The producers of some products would be more affected than the producers of other. For example, some sausage products lose more moisture during distribution than, say, vacuum-packed bacon, and, therefore, the producers would have to do more "overpacking" at the plant. The effect of the regulation would also depend on the type of packaging material used, and may result in a trend towards hermetically sealed packages.

The regulation's effect on the industry will also vary with the type of tare that it requires. Under a drained weight system, alternatives (2) and (3), products that lose a significant amount of moisture through seepage into the package, such as corned beef briskets, will have a higher labeled price per pound than they do at present, simply because the free liquid will no longer be included in the net weight.

The regulation will also affect State and local governments. The costs of enforcing a new net weight regulation would be higher, but far more so under alternatives (2) and (3) than under alternative (4). USDA estimates costs under alternatives (2) and (3) at approximately \$450,000 for equipment, along with some additional labor costs. Alternatives (2), (3), and (4) would significantly enhance the ability of State and local weights and measures officials to enforce net weight standards.

#### Related Regulations and Actions

*Internal:* Proposed Rule for Voluntary Meat and Poultry Plant Quality Control System—44 FR 53526, September 14, 1979.

*External:* Food and Drug Administration, 21 CFR 501.105g. Federal Trade Commission, 16 CFR 500.22.

**Active Government Collaboration**

FSQS and FDA have held a series of meetings over the past year to develop, as far as possible, a common approach to net weight regulations. In late 1977 and early 1978, the two agencies held several public hearings on the issue of net weights.

In 1975, USDA, FDA, FTC, and the National Bureau of Standards formed an interagency net weight committee. The committee has met intermittently since then.

In the past 2 years, FSQS officials have consulted regularly with State and local weights and measures officials and State Departments of Agriculture.

**Timetable**

Reproposal or Final Rule—December 1979.

Public Comment—period ends March 1980.

Final Rule—May 1980.

Regulatory Analysis—will be performed as part of the rulemaking process.

**Available Documents**

Notice of availability of ESCS study—44 FR 51275, August 31, 1979. Comment period on ESCS study closed October 30, 1979.

Net Weight Regulations for Meat and Poultry Products, 9 CFR 317.2(h)(2), 9 CFR 381.121(e)(6).

Proposed Regulations for Meat and Poultry Products—42 FR 61279, December 2, 1977.

Consumer Federation of America, "Analysis of Proposed Regulations on Net Weight Labeling," October 1978.

General Accounting Office, "Proposed Changes in Meat and Poultry Net Weight Labeling Regulations Based on Insufficient Data," CED-79-28, December 20, 1978.

Economics, Statistics, and Cooperatives Service, USDA, "Assessment of Proposed Net Weight Labeling Regulation," August 1978.

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**DEPARTMENT OF THE TREASURY****Bureau of Alcohol, Tobacco and Firearms****Advertising regulations under the Federal Alcohol Administration Act****Legal Authority**

Federal Alcohol Administration Act, § 5, 27 U.S.C. § 205(f).

**Statement of Problem**

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for ensuring that advertisements for alcoholic beverages contain certain information about the product and that the advertisements are not false or misleading. While the current advertising regulations have remained basically unchanged since ATF adopted them in the mid-1930s, advertising techniques and practices and consumer education and awareness have changed significantly in the past 40 years. Over the years, ATF has issued a number of rulings interpreting the regulations in light of the changing advertising practices and growing consumer awareness. In many cases, inappropriate regulations and varied interpretations of these regulations have caused confusion for both the advertiser and the consumer.

ATF reviews approximately 8,000 advertisements for alcoholic beverages each year, usually after the advertiser is ready to release the advertisement to the media. However, since review by ATF is not mandatory, some advertisements are released without ATF review.

Furthermore, because of the confusion over certain regulations, some advertisements violate these regulations and are recalled or rejected, costing the industry and ATF money and effort. A monetary estimate of the costs which industry and ATF incur because of recalled and rejected advertisements is unavailable.

From the consumer's perspective, many advertisements which conform to ATF regulations seem to be false or misleading. This is due to the changing perceptions of consumers toward certain products. For instance, the term "light" used with a malt beverage traditionally referred to the color of the product. Now the term "light" has a completely different meaning to most consumers of malt beverages.

For those reasons, ATF is reviewing the advertising regulations for possible updating and revision. Among the areas under review are:

(a) The use of prominent persons in alcoholic beverage advertisements;

(b) The use of subliminal advertising techniques;

(c) The use of the word "Natural" in advertisements to imply that the product is natural;

(d) The current interpretation of false or misleading advertisements;

(e) The use of curative or therapeutic references in advertisements;

(f) Comparative advertisements;

(g) An interpretation of disparagement (for instance, should statements about a competitor's product which are true but nonetheless disparaging be allowed in advertisements?);

(h) The use of "taste tests" in alcoholic beverage advertisements; and

(i) The use of the term "light" on malt beverages.

If ATF fails to address these issues, the problem of false and misleading advertising will continue.

**Alternatives Under Consideration**

ATF is not presently reviewing any specific alternatives, since we are still analyzing the comments on the ANPRM (43 FR 51808, November 21, 1978). The Federal Alcohol Administration (FAA) Act requires the Treasury Department to regulate the advertisement of alcoholic beverages. But the Treasury Department may deregulate in certain areas within the framework of the FAA Act and may rely on self-regulation by the industry. On the other hand, ATF has received in response to the ANPRM approximately 8,900 comments from the public at large who wanted, in general, greater restrictions placed on alcoholic beverage advertising.

By clarifying and consolidating regulations, policies, interpretation, and rulings on advertising into a single comprehensive package, ATF hopes to liberalize the regulations in certain areas (for example, if ATF allows the use of truthful comparative advertising, the consumer might gain more information about various alcoholic beverage products and be able to make a more informed selection). ATF hopes also to restrict certain advertising practices which the public finds objectionable (for example, many respondents objected to the possible use of subliminal stimuli in alcoholic beverage advertising).

ATF will uniformly apply the adopted regulations to all alcoholic beverage advertising.

**Summary of Benefits**

These regulations will directly benefit producers, distributors, advertisers, and consumers of distilled spirits, wine, and malt beverages. Because these regulations will clarify ATF's position on advertising, they will help reduce the

recall and rejection of advertisements, thus saving the industry money, while protecting the industry's right to advertise its products and reinforcing the consumer's right to expect clear and truthful advertisements.

Certain State governments may also benefit from a revision of the regulations, since many States adopt Federal advertising regulations. The FAA Act only affects advertising that involves interstate commerce. Many States simply adopt any Federal regulations on alcoholic beverage advertising to cover any interstate situation. In addition, Federal advertising regulations concerning malt beverages apply only in States which have passed similar legislation.

#### Summary of Costs

At the present time, there is no specific estimate of the costs of this project. In general, costs to producers should not increase, since these regulations affect only advertising content and not methods of advertising. Consolidating interpretive notices and issuing comprehensive and definitive regulations should result in savings to the industry.

Revising the regulations should not increase costs to Government. The Government may benefit, since it currently spends much effort in explaining confusing regulations and rulings.

#### Sectors Affected

Principally, the regulations will affect producers and distributors who advertise, advertisers, and consumers of wine, distilled spirits, and malt beverages. They will not affect any one geographical area more than another. They will affect small businesses which advertise the same as large businesses which advertise.

#### Related Regulations and Actions

*Internal:* ATF is considering requiring ingredient labeling for alcoholic beverages. ATF also has contracted a study with Michigan State University to study the effects of alcoholic beverage advertising on the drinking habits of young people. A report is expected by December 1979.

*External:* The Federal Trade Commission (FTC) is responsible for regulating the advertisement of wine with less than seven percent alcohol by volume and the advertisement of non-alcoholic beverages.

#### Active Government Collaboration

The FTC and ATF are collaborating on this project. ATF will also solicit comments on proposed regulations from

other Federal agencies and State and local governments.

#### Timetable

NPRM—December 1, 1979.

Public Hearings—will be held if ATF decides they are warranted.

Regulatory Analysis—ATF will not prepare.

#### Available Documents

ANPRM—Notice No. 313, 43 FR 51808, November 21, 1978.

A notice extending the comment period—Notice No. 313, 44 FR 2603, January 12, 1979.

Copies of the documents and comments may be inspected at the ATF Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., during normal business hours.

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#### TREAS-ATF

#### Partial ingredient labeling of wine, distilled spirits, and malt beverages

#### Legal Authority

Federal Alcohol Administration Act, § 5, 27 U.S.C. § 205.

#### Statement of Problem

Unlike labels on other foods and beverage products, labels on alcoholic beverage containers do not identify the ingredients or additives contained in the product. Consumers, especially those who have certain allergies, desire this information. Regulations for ingredient labeling on alcoholic beverage containers would ensure that the Bureau of Alcohol, Tobacco and Firearms (ATF) does not require something on a label that is likely to mislead the consumer and that will not result in increased cost to the consumer without corresponding benefits.

In September 1972, the Center for Science in the Public Interest, Washington, D.C., petitioned ATF to require bottlers of wine, distilled spirits, and malt beverages to list all ingredients on the labels of bottles or packages of these alcoholic beverages. The petitioner offered guidelines that were similar to those that the Food, Drug and Cosmetic Act enforces and that the Food and Drug Administration (FDA) administers. The petitioner contended that consumers do not have readily available information regarding

ingredients or additives and that consumers have a right to know what materials are in foods and beverages in order to make informed choices in purchasing them.

While ATF has geared its regulation of the alcoholic beverage industry to protecting consumers from deception or unsafe ingredients, ingredient labeling obviously would expand the scope of available information.

If ATF requires ingredient labeling, individuals who are aware of specific ingredients or types of ingredients they medically cannot ingest or do not wish to ingest would know what they should not or do not wish to drink.

#### Alternatives Under Consideration

In reviewing the alternatives for ingredient labeling and discussing them with other agencies, ATF has considered the following options:

- (1) Full ingredient labeling;
- (2) Partial ingredient labeling allowing the use of common terms to describe the basic ingredients (such as grains or fruits) but with a requirement to list all additives used;
- (3) Partial ingredient labeling allowing the bottler to list the range of possible essential components (those necessary to develop the character of the product, such as corn or rye for distilled spirits, or grapes for wine, or barley for malt beverages) in agriculturally identifiable terms but with a requirement to list all additives used;
- (4) Partial ingredient labeling with the requirement to list only the additives used;
- (5) No ingredient labeling in any form.

#### Summary of Benefits

Regulations on ingredient labeling of alcoholic beverages will give the consumer a uniform method of identifying those ingredients which may cause medical problems. The regulations will also expand the consumer protection program of ATF and make the requirements for ingredient labeling on alcoholic beverages uniform with the requirements of the food industry.

#### Summary of Costs

With the information provided by the comments we received from the general public and the affected industry in response to the NPRM, ATF will prepare a regulatory analysis. Moreover, ATF will strive to minimize the cost to the industry of implementing ingredient labeling requirements, if we adopt them, because any additional cost to the alcoholic beverage industry may be passed on to the consumer.

**Sectors Affected**

Principally, this regulation will affect consumers, foreign manufacturers, domestic importers, and manufacturers of wine, distilled spirits, and malt beverages.

**Related Regulations and Actions**

*Internal:* ATF provides advertising guidelines for marketing alcoholic beverages and is currently reviewing the advertising regulations.

*External:* The Food and Drug Administration is responsible for ingredient labeling on nonalcoholic commodities.

**Active Government Collaboration**

ATF worked closely with the Food and Drug Administration in developing ingredient labeling requirements and plans to consult FDA in developing a regulatory analysis.

**Timetable**

Regulatory Analysis—January 1980.

Public Hearings—will be held if warranted.

Final Rule—spring 1980 (if proposed, the Final Rule would be phased-in over a multi-year period).

**Available Documents**

Withdrawal notice—Notice No. 285, 40 FR 52613, November 11, 1975.

NPRM—Notice No. 314, 44 FR 6740; February 2, 1979.

Extension of comment period—Notice 314, 44 FR 14577, June 4, 1979.

Fact Sheet on Proposed ATF Ingredient Labeling, January 30, 1979.

ATF News Release, ATF Proposed Ingredient Labels on Alcoholic Beverages, No. FY-79-17, February 1, 1979.

These documents are available for public inspection at the ATF Public Reading Room, Room 4408, 1200 Pennsylvania, N.W., Washington, D.C., during normal business hours.

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**TREAS—ATF**

Revision of the distilled spirits tax system

**Legal Authority**

Distilled Spirits Tax Revision Act of 1979 (Title VIII, Trade Agreements Act of 1979), P.L. 96-39, § 801, 93 Stat. 273.

**Statement of Problem**

Under the Internal Revenue Code of 1954, the Secretary of the Treasury has strict control over liquors for beverage purposes and alcohol for industrial purposes, from the beginning of the production process to the point of removal from bonded premises (the portion of the distilled spirits plant where spirits on which the tax has not been paid or determined are stored). The Secretary has maintained control through a rigid system requiring permits, on-site supervision, and restriction of operations to separate premises or designated areas. However, in recent years, Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) has recognized the need for modernizing this system of control and has sought legislative amendments to make possible an all-in-bond system for taxing and controlling distilled spirits. Under the all-in-bond system, all distilled spirits operations will be conducted on the bonded premises of a distilled spirits plant.

The Distilled Spirits Tax Revision Act of 1979 changes the tax system to eliminate disparities in taxation between domestic and imported spirits. The Act also gives the Secretary of the Treasury authority to discontinue assignment of Government officers at distilled spirits plants. Finally, in order to promote increased efficiency of Government and industry operations, the Act permits many other simplifications in the regulation of the distilled spirits industry.

ATF will issue interim regulations before the Distilled Spirits Tax Revision Act of 1979 goes into effect on January 1, 1980.

At the same time that ATF implements the new tax system, ATF will adopt other regulatory simplifications (for example, reducing Government forms and requirements for qualification to produce alcoholic beverages).

**Alternatives Under Consideration**

Since these regulations are required to implement a statute, there is no practical alternative to issuing them. However, because these regulations completely change the ways the distilled spirits industry will operate and be regulated, ATF will issue them in the form of interim rules with provision for public comment. Based on the public comments it receives, ATF will issue a Final Rule. By the time ATF issues it, the Final Rule will have benefited from the practical experience of both the industry and the Government under the interim regulations.

**Summary of Benefits**

Direct benefits accruing to industry members include savings due to simplification of their methods of industry operation and required recordkeeping. With respect to operations, greater flexibility on the use of premises and equipment will be possible, because all operations will be conducted on bonded premises. In addition, eliminating the requirement for Government officers to directly supervise certain operations or to be present to allow proprietors access to bonded areas will allow for more efficient scheduling of plant operations. It will be possible, too, to replace many required Government forms by allowing proprietors to use commercial records.

Under the new system, proprietors will determine the amount of tax due to the Government before removing spirits from the plant. Under existing regulations, ATF officers determine the tax when bulk spirits are withdrawn from bonded premises to non-bonded processing and bottling facilities. By postponing the tax determination until removal of the finished products, the new system should greatly simplify the records systems necessary for proprietors to document their tax liability.

Distilled spirits taxes are paid on the basis of semimonthly return periods. Under the present system, qualified proprietors may defer actual payment of tax for up to 30 days. The new law provides for an additional deferral period of 15 days. This increased deferral period will be phased in over three years.

The Government will realize manpower savings due to the elimination of on-site supervision of distilled spirits plants by ATF officers and the more simplified methods of tax collection, records, and reporting requirements.

**Summary of Costs**

Proprietors of distilled spirits plants should generally experience some increase in costs during the first year of the new system. Training employees, adopting security measures to replace those that were formerly provided by the Government, and revising internal control and recordkeeping systems will entail a one-time cost.

The Government also will bear administrative costs of implementing the new system. Specific costs include those for developing the new regulations and procedures and for providing assistance to the industry in converting to the new system.

## Sectors Affected

With respect to proprietors of distilled spirits plants, the costs and benefits resulting from the new regulations would apply in proportion to the size and complexity of their operations and current compliance costs. Any differences may likely occur because of the type of operations that are presently conducted and the specific products that are manufactured. For example, a small plant producing and bottling only bourbon whisky would be affected in the same manner as a much larger plant with a similar operation, but quite differently from another small plant which processed and bottled various liqueurs, cordials, and imported spirits.

These regulations should not affect wholesalers and retailers of distilled spirits products. Importers and exporters will indirectly benefit from simplified procedures under these regulations, but changes on the effective tax and duty rates and possible increased trade opportunities arising from the other titles of the Trade Agreements Act of 1979 will have a more direct effect.

The wine industry and manufacturers of alcoholic flavorings used in spirits will probably feel some effects of the new distilled spirits tax system. While the regulations will provide ways for wineries and flavoring manufacturers to continue their existing relationships with distilled spirits plants, the statutory changes in the tax system may lead to changes in product mix or in the formulation of existing products which would affect their sales to the distilled spirits industry. Wineries are also affected by the elimination of "standard wine premises". Under present law, winery proprietors cannot manufacture and bottle wine products (for example, wine products made with artificial flavors) other than "standard" wines on winery premises. These wine products were manufactured and bottled at distilled spirits plants only, using wines on which the tax was paid. Effective January 1, 1980, winery proprietors may manufacture and bottle these wine products.

## Related Regulations and Actions

*Internal:* The principal regulations that this statutory change affects are the following: 27 CFR 201—Distilled Spirits Plants; 27 CFR 240—Wine; 27 CFR 231—Taxpaid Wine Bottling Houses; 27 CFR 250—Liquors and Articles from Puerto Rico and the Virgin Islands; 27 CFR 251—Importation of Distilled Spirits, Wine and Beer; 27 CFR 252—Exportation of Liquors; 27 CFR 186—Guaging Manual; 27 CFR 170—Miscellaneous Regulations Relating to

Liquors; 27 CFR 211—Distribution and Use of Denatured Alcohol and Rum; 27 CFR 213—Distribution and Use of Tax-free Alcohol; 27 CFR 194—Liquor Dealers; 27 CFR 197—Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products; and 27 CFR 5—Labeling and Advertising of Distilled Spirits.

We are incorporating the following regulation projects now under development into this general revision:

Alternate Premises between Distilled Spirits Plants and Bonded Wine Cellars (27 CFR 201 and 240);

Formulas for Rectified Products (27 CFR 170, 201, 250, and 252);

Strip Stamps and Alternate Devices. (NPRM published November 7, 1978, 43 FR 51808, 27 CFR 194, 201, 250, 251 and 252);

Export Storage Facilities at Distilled Spirits Plants (27 CFR 201);

Samples of Distilled Spirits (27 CFR 201); and

Distilled Spirits Meters (27 CFR 201).

*External:* The statutory changes also affect the regulations the U.S. Customs Service administers (19 CFR).

## Active Government Collaboration

Certain aspects of the regulatory changes will affect procedures of the U.S. Customs Service and the Internal Revenue Service (IRS). Some distilled spirits plants currently receive imported bulk spirits under an immediate delivery procedure whereby ATF officers act as Customs officers. Elimination of assignment of ATF officers would preclude the use of this procedure in the future. ATF is coordinating its plans for withdrawal of ATF officers with the U.S. Customs Service.

The repeal of the rectification tax (an additional tax applicable to certain mixed or processed products) eliminates the need for the collection of the rectifier's occupational tax by IRS. ATF will coordinate this matter in the event that taxpayers erroneously pay the rectification tax after repeal.

## Timetable

Interim Final Rule—November 1979.

Public Comment—90 days from date of interim Final Rule.

Final Rule effective—January 1, 1980.

Regulatory Analysis—ATF will not prepare.

## Available Documents

ANPRM—Notice No. 326, 44 FR 41833, July 18, 1979.

Public comments in response to ANPRM.

Pub. L. 96-39, Trade Agreements Act of 1979.

Committee Reports—U.S. Senate, Committee on Finance (S. 1376); U.S. House of Representatives, Ways and Means Committee (H.R. 4537).

These documents are available for public inspection at the ATF Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., during normal business hours.

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## TREAS-ATF

### Unlawful trade practices under the Federal Alcohol Administration Act

#### Legal Authority

Federal Alcohol Administration Act, § 5, 27 U.S.C. § 205.

#### Statement of Problem

The Federal Alcohol Administration (FAA) Act prohibits certain unfair trade practices within the alcoholic beverage industry. Among these practices are unfair labeling and advertising of alcoholic beverages, bribery of wholesale or retail employees or officials by suppliers, creation of "tied-house" relationships between suppliers and retailers (furnishing services or things of value to induce the retailer to buy that supplier's products); consignment sales; and conditional sales in which the seller (supplier) maintains a security interest in the alcoholic beverages at the retailer's premises. The FAA Act also provides for some exceptions from these general prohibitions.

The FAA Act became law in 1935. Since then, Treasury has issued regulations relating to items or legal inducements that a wholesaler or supplier may furnish to a retailer. Other provisions of the FAA Act concerning trade practices have not been codified by regulations in the Code of Federal Regulations, although the Treasury Department has enforced those provisions. Since 1935, the Bureau of Alcohol, Tobacco and Firearms (ATF) has issued rulings and industry circulars in order to interpret the provisions of the FAA Act on unlawful trade practices. These interpretative documents have generally addressed one specific problem or a circumstance which required clarification.

ATF has reviewed past circulars, rulings, and its present interpretation of

the unlawful trade practice provisions of the FAA Act. Some conclusions of this review were:

(1) ATF policy with respect to legal inducements such as free goods and services (and exemptions) was based largely on hearings and public comments during the late 1930s; for example, inflation has increased costs many times since the 1930s, but the maximum costs permitted for items supplied by suppliers to retailers such as clocks, signs, or calendars has remained almost unchanged in the regulations.

(2) ATF had never formally stated all possible reasons for the legitimate return of alcoholic beverages by a retailer to a supplier; confusion exists among suppliers and wholesalers whether some returns are permitted, such as returns from a retailer engaged in business only part of a year or returns from a retailer of products for which there is only a seasonal demand.

(3) Industry practices had changed greatly since the 1930s, and certain practices such as stocking and rotation of beer and wines by a supplier at a retailer's premises, had now become commonplace. However, regulations have never recognized these practices as legitimate.

(4) Industry members were seeking guidelines on permissible activities, such as their participation in activities sponsored by retail liquor dealers. Since regulations do not address this issue, it is difficult to determine what activities are recognized as legitimate.

(5) Rules specifying unlawful trade practices had never been written in an easy-to-use reference; instead, there were many separate rulings and circulars covering the same subject. In order to research the position of ATF on a trade practice, it may be necessary to examine many rulings, letters, and circulars dating as far back as 1936. Moreover, many of these documents are difficult for the general public to find.

As a result of this review, ATF has decided to issue regulations clarifying and implementing all of the unlawful trade practice provisions.

By issuing these regulations, ATF wishes to modernize and update its interpretation of the FAA Act and liberalize requirements for the alcoholic beverage industry as much as is consistent with the intent of the FAA Act. ATF will also allow for full public participation in the development of new rules and will combine all outstanding rulings and circulars into a single codified source of rules relating to unlawful trade practices.

#### Alternatives Under Consideration

Alternatives to issuing these regulations would be to issue no new regulations or to issue ATF rulings which would consolidate outstanding rulings and circulars. ATF believes that new regulations present the best alternative, because they will clarify all of the trade practice issues which have caused confusion in the past and will present a single, unified source of rules relating to unlawful trade practices.

#### Summary of Benefits

These regulations benefit both industry and Government. The new regulations, resulting from re-examination of rules, some of which are over 40 years old, will modernize and liberalize the requirements. As a result of this re-examination and of dropping some restrictions, there will be less Government regulation in some areas, such as stocking and rotating alcoholic beverages at the retailer's premises. ATF expects that these regulations will promote further competition among suppliers and wholesalers of alcoholic beverages by increasing the types of services which they may offer to retailers, and by encouraging the development of new merchandising techniques for alcoholic beverages. These regulations are intended to protect the three-tier system of producers, wholesalers, and retailers, and prevent monopolistic control over the retail sale of alcoholic beverages through supplier/wholesaler ownership or prevent influence over retail liquor dealers. Under the FAA Act, ATF does not have jurisdiction over any pricing arrangements for alcoholic beverages, but the FAA Act is intended to encourage competition in the distribution of these beverages which may tend toward lower prices.

A second major benefit will be the codification of many rulings and circulars into one clear source of rules which industry and Government may use.

#### Summary of Costs

ATF does not believe specific costs, either to industry or to the Government, will result from these regulations. ATF does not expect to bear increased administrative costs. These regulations should not have an effect on retail prices of alcoholic beverages.

#### Sectors Affected

These regulations will affect the entire alcoholic beverage industry—producers, wholesalers, importers, retail liquor dealers, and bottlers of distilled spirits, wines, and beer. In addition, these

regulations will affect those states which conduct wholesale or retail liquor sales through State stores or warehouses.

These regulations will increase competition among producers, bottlers, wholesalers, and importers of alcoholic beverages.

#### Related Regulations and Actions

*Internal:* None.

*External:* Regulations on prohibited trade practices that ATF issued under the FAA Act and which relate to beer apply *only* in states which have adopted similar laws or regulations regarding trade practices.

#### Active Government Collaboration

ATF has provided each State liquor control board with copies of this NPRM (44 FR 45298, August 1, 1979). ATF will receive State input during public hearings and from written comments to the NPRM.

#### Timetable

Written comments on NPRM—due on or before December 17, 1979.

Final Rule—spring 1980.

Regulatory Analysis—ATF will not prepare.

#### Available Documents

ANPRM—Notice No. 315, 42 FR 27116, December 30, 1977.

NPRM—Notice No. 327, 44 FR 45298, August 1, 1979.

Transcripts of five public hearings—September and October 1979.

These documents may be inspected at the ATF Reading Room, Room 4408, Federal Building, 12th & Pennsylvania Avenue, N.W., Washington, D.C., during normal business hours.

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#### FEDERAL TRADE COMMISSION

*The entries for children's advertising, credit practices, mobile homes, and standards and certification describe rulemaking proceedings that are currently in progress. The views expressed in these entries are those of the rulemaking staff, based upon information now available. These views should not be regarded as a final staff position, nor should they be attributed to the Commission itself, which will address the issues presented after it reviews the entire record.*

*The entry for Blue Shield and certain other open-panel medical prepayment plans describes an investigation that might lead to a rulemaking proceeding. The views expressed here are those of the investigative staff, based upon information now available. These views should not be regarded as a final staff position, nor should they be attributed to the Commission itself, which will consider whether a rulemaking proceeding should be undertaken after it reviews the results of the investigation.*

## FTC

### Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans

#### Legal Authority

Federal Trade Commission Act, §§ 5, 6, 15 U.S.C. §§ 45 and 46.

#### Statement of Problem

Blue Shield and other open-panel medical prepayment plans pay for or deliver care to patients principally through physicians who practice on a fee-for-service basis. Generally speaking, open-panel plans are those which will pay all or virtually all physicians practicing in the area that is served by the plan for covered services they provide to the plan's subscribers. These characteristics distinguish them from other plans where care is delivered through physicians who are employed by the plans or who are paid a fixed fee for providing all or a portion of a person's medical care.

Blue Shield plans make up the largest system of open-panel medical prepayment plans in the nation. The 70 Blue Shield plans operating in the United States today cover about 40 percent of the population of the nation and control or administer payment of about a quarter of all funds paid for the services of physicians. There also exist a number of somewhat different open-panel plans—principally medical service bureaus, foundations for medical care, and open-panel health maintenance organizations ("HMOs") that appear to function much like Blue Shield plans in that they pay for services provided by physicians who compete with each other. Together, these latter plans cover a small but rapidly growing portion of the population of the nation.

The staff of the Federal Trade Commission (FTC) has submitted a report to the Commission which asserts that groups made up of physicians who compete with each other in serving patients covered by a prepayment plan, such as state and local medical societies, participate in the control of many Blue Shield and other open-panel prepayment plans. In particular, the

report points out that these groups have often selected a majority or smaller proportion of the members of plans' boards of directors. The report also asserts that numerous members of such boards are physicians whose services are paid for by the plan. The report details that as of 1978, for example, medical societies and other physician groups formally participated in the selection of some members of the board of directors of 47 of the 70 Blue Shield plans and selected a majority of the boards of directors of 32 plans. Thirty-one plans had physician majorities on their boards, and virtually all plans had physician-dominated committees that made decisions about payments and coverages.

This staff report concerning medical control of prepayment plans raises several issues in light of the rapid escalation of the cost of health care. If the medical profession controls Blue Shield and other open-panel medical prepayment plans, might this be part of the reason physicians' fees are so high and are rising so fast? Does a plan controlled by the medical profession have less incentive than a plan not controlled by the medical profession to seek to keep down physicians' fees and to pay the fees of non-physician providers of health care? In public policy terms, is such control a conflict of interest? In antitrust terms, is such control a restraint of trade?

Similar concerns have been voiced by a number of economists and others who have examined the health care industry. Several states have recently taken action through their legislatures or the courts to reduce or eliminate medical control of prepayment plans. In 1978, the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce held hearings on Blue Shield's impact on rising health care costs. One of its recommendations was that the FTC consider promulgating a rule to prohibit physicians and physician organizations from dominating Blue Shield plans.

The FTC staff report advances the proposal that when a plan's board members are selected by a medical society or other physician organization, those members may not act independently in the interests of the plan or its subscribers. In documents the staff cited, for example, medical societies referred to Blue Shield as the "economic arm of the medical profession," and it has been asserted that the price Blue Shield pays to physicians "responds to the will of the medical profession."

When physicians or physician groups elect members of plans' boards of

directors, the staff asserts that they may be able to control or influence economically significant decisions that the plans make. These decisions concern how much to pay physicians, which physicians or other health professionals to pay for covered services, what cost-containment mechanisms to employ, and other matters that affect competition in the professional health services sector of the nation's economy.

The Commission's staff has concluded that there is reason to believe that control or participation in the control of open-panel medical prepayment plans by physician organizations, and, in some circumstances, by individual physicians, impairs competition among physicians and between physician and non-physician providers of health care services and thus may be an unfair method of competition in violation of § 5 of the Federal Trade Commission Act.

#### Alternatives Under Consideration

The staff has recommended that the Commission initiate a rulemaking proceeding to consider the legality of such medical participation in control of open-panel medical prepayment plans. To provide a focus for that proceeding, the staff has recommended that the Commission issue a proposed rule that would prohibit medical societies and other organizations made up of physicians who compete with each other from directly or indirectly participating in the control of any open-panel medical prepayment plan, or in the selection of any member of the board of directors of any open-panel medical prepayment plan. The proposed rule also would bar persons from serving on the governing body of an open-panel plan as representatives of physician organizations, and it would prohibit plans from permitting such representatives to serve on their governing bodies. Another provision of the rule as the staff proposed it would prohibit physicians who compete in providing services paid for by a plan from comprising more than 25 percent of the plan's board of directors. This last provision would expire in five years. The Commission is in the process of considering whether to accept, reject or modify these staff recommendations.

If the Commission decides to begin a rulemaking proceeding, all sectors of the public will have an opportunity to comment on the form the rule should take, and on its possible effects on the plans and their subscribers, on medical groups, and on the public at large. The rule which the Commission may propose raises a number of issues which the staff would carefully consider in the proceeding. The first of these is which

open-panel plans the rule should cover. The staff has asked whether the rule should apply only to plans which will pay more than 50 percent of the physicians practicing in their areas for services they provide to subscribers. The staff feels that there is reason to believe that plans which will reimburse relatively few physicians may encourage competition in the physician service market, even if physician groups control them. However, the Commission would consider whether such a limitation is appropriate; possible alternatives include using a higher or lower percentage figure, applying the rule to all open-panel plans, only to the Blue Shield plans, or only to plans that cover more than a specified percentage of the population of their service areas.

A second issue the staff raised concerns the appropriate treatment of organizations of participating physicians—those physicians who have entered into contracts with the plan that govern the conditions under which they will be paid for services they render to plan subscribers. The rule the staff proposed treats such organizations in the same way as medical societies and other types of physician organizations, prohibiting them from selecting any member of a plan's board of directors. The Commission would consider whether involvement of such groups in board selection is likely to cause anticompetitive behavior, or whether they should be permitted some role in the selection of the plan's governing bodies.

The Commission would also carefully consider the degree of medical participation in control which the rule would prohibit. The staff's proposed rule would prevent medical organizations from having any part in selecting board members. Alternative rules might permit medical organizations to select a small number of board members, or to nominate or approve members that others select.

The Commission also would consider whether the rule should prohibit more than a stated percentage of board membership by physicians who compete with other physicians in providing services the plan pays for even though they are not selected by medical groups. The staff proposal would limit such physicians to 25 percent of board membership. Alternatives include using a higher or lower percentage limitation and having no provision of this nature at all. Such a provision could also be restricted to plans which, within a stated period of time, had boards of directors whose composition violated the other provisions of the rule.

The Commission may also consider alternatives to issuing any rule. Rather than addressing the impact of medical control of prepayment plans on an industrywide basis, the Commission could issue complaints against selected plans or physician groups that have relationships of the type that the proposed rule would prohibit. The Commission could also decide that it need take no action at all. In recent years a number of Blue Shield plans have moved toward greater public representation on their boards of directors, and some states have required plans to reduce or eliminate medical influence over selection. Thus, in these cases the Commission could conclude that the public interest does not require it to intervene at this time.

#### Summary of Benefits

By breaking the structural ties between physician organizations and open-panel medical prepayment plans, the proposed rule seeks to terminate what appears to the staff to be an antitrust violation. It also may promote competition in the health service sector by permitting open-panel plans to make their payment, benefit, and coverage decisions in an independent manner. Increased competition may help to hold down health care costs by (1) increasing the incentives of open-panel plans to hold down the level of physicians' fees and to provide appropriate coverage for the services of non-physicians, (2) encouraging commercial insurers to seek to hold down the costs of health care services, and (3) providing an environment in which alternative health care delivery systems, including closed-panel health maintenance organizations and independent open-panel plans, have a full opportunity to compete.

Although the cost savings that would result from the rule cannot be calculated at this time, the FTC's staff believes they would be substantial. While the Bureau of Economics has not yet published a report on this subject, preliminary results of a study now underway indicate that medical participation in the control of Blue Shield plans leads to significantly higher reimbursement levels.

#### Summary of Costs

One type of direct cost which could be imposed by the proposed rule would be the administrative costs involved in changing the way affected plans would be governed. The staff has not yet attempted to estimate the amount of these costs. It is possible that the rule may impose some indirect costs, in that medical societies may react to the rule in ways which may possibly interrupt

the ability of some plans to offer paid-in-full coverage to subscribers, or to implement certain kinds of cost-containment programs. It is also possible that the rule, by preventing medical societies from establishing and operating prepayment plans which are open to participation by all physicians in the community, may reduce the number of such plans which are formed. The actual costs will depend on the final form of any action taken by the Commission.

#### Sectors Affected

The rule proposed by the staff would apply to all plans that operate, administer or underwrite a prepayment of financing mechanism for medical services, including Blue Shield plans, commercial and mutual insurance companies, and other types of open-panel medical prepayment plans. The staff is not aware of any insurance companies that now violate the proposed rule. A number of other plans now in operation also appear to comply with the rule as proposed. The proposed rule would not preempt State laws, and thus would not affect plans which are required by law to have boards of directors which do not comply with the rule. However, the Commission would consider whether it should preempt laws that conflict with any rule it might adopt. State regulation of the insurance industry would not be affected.

All sectors of the health care financing industry would be affected by the increased competition which the elimination of medical control of plans is expected to generate. Physicians and other health care providers may also be faced with a more competitive market for their services. This increased competition may benefit consumers by reducing the rate of increase in health care costs.

#### Related Regulations and Actions

*Internal:* The Commission has an ongoing program of investigation of competitive restraints in the health care sector.

*External:* A number of states have laws governing the composition of plans' boards of directors. Those laws would not be affected by the proposed rule. In some States, such as Pennsylvania, these laws have been amended to reduce medical participation in the control of Blue Shield plans. In other states, including Ohio and Indiana, court suits or administrative actions have been undertaken for the same purpose. Other states, including New York and Virginia, have recently studied the relationship between plans and medical societies.

The Department of Health, Education and Welfare has published a notice of intent to issue a regulation prohibiting doctors, hospital administrators, and others with financial interests in the health care industry from dominating the governing body of any carrier or intermediary that participates in the Medicare program or any fiscal agent that participates in the Medicaid program. The National Health Plan legislation recently proposed by the Executive Branch would also impose restrictions on the proportion of the boards of directors of plans administering that program which may be physicians or selected by physicians.

#### Active Government Collaboration

The staff of the Bureau of Competition has consulted with numerous other Federal and State agencies in the course of preparing its report. The staff expects to continue to solicit the views of both Federal agencies and the States in the course of any rulemaking proceeding and to consider these views in the course of preparing its recommendations to the Commission.

#### Timetable

NPRM—winter 1979–1980.  
Written comments and public hearings (if held)—1980.  
Final report—1980–1981.

#### Available Documents

A staff report on "Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans," dated April 1979, is available from Room 130, Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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#### FTC

#### Mobile home sales and service trade regulation rule

#### Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

#### Statement of Problem

Mobile homes are a major segment of the low-cost housing market. Approximately 275,000 new mobile homes are sold annually. Most mobile home manufacturers offer a one-year written warranty with their homes. Manufacturer-warranties typically cover

defects in the material and workmanship of the home. Many consumers discover defects in their new mobile homes, including water leaks, malfunctioning plumbing, buckled frames, and improper installation. Some problems, e.g., malfunctioning plumbing, electricity and heat, may threaten the safety of the homeowner and may render the mobile home uninhabitable.

Although they are obligated under the warranty to repair defects, some manufacturers and dealers have in a significant number of instances failed to provide warranty service to the consumer. Some consumers who sought warranty repairs were either refused service or service was delayed beyond a reasonable time. Moreover, in some instances, when repairs were made, they were not done correctly.

These problems tend to indicate that mobile home manufacturers may not have an adequate warranty performance system. First, although dealers perform much of the warranty work, some manufacturers do not select their dealers on the basis of service capabilities. Second, sometimes disputes between manufacturers and dealers over who is responsible for particular repairs delay warranty service. Third, some warrantors fail to have sufficient parts, service personnel, and equipment to fulfill consumer requests for repairs. Finally, some warrantors do not properly record and log consumer complaints and are unable to determine if repairs have been done. Because they do not have an adequate warranty performance system, manufacturers and dealers are not able to provide prompt and competent warranty repairs for mobile homeowners.

The proposed rule seeks to set time standards for warranty repairs, and would require pre-occupancy and follow-up inspections of the home. Also, it would require that those who offer warranties on mobile homes have available the necessary equipment, personnel, parts and supplies, and recordkeeping systems to fulfill their warranty obligations. Manufacturers also would be required to evaluate the service capability of, and enter into written agreements with, dealers and others who perform warranty repairs. The rule sets forth basic requirements for an effective warranty performance program.

#### Alternatives Under Consideration

The Commission staff is evaluating the need for each of the provisions of the proposed rule, based upon a review of written comments it received and testimony presented at hearings it held on the rule. For example, staff is

assessing whether or not it should eliminate the requirement for a second on-site inspection of the mobile home. This would reduce compliance costs by approximately \$100 per home, but might also allow installation problems to go undetected until major repairs were required and the warranty period had expired.

The Commission staff is also considering alternatives to the proposed rule that would rely more directly upon market forces to improve industry warranty performance. One such provision would establish deadlines for repair and require inspections before mobile homes are delivered to consumers, but leave most other aspects of the warranty performance system to the discretion of manufacturers and dealers. Staff is also exploring ways to provide consumers with increased information about industry warranty performance to enhance competition among sellers.

#### Summary of Benefits

The proposed rule is intended to ensure that mobile homeowners receive prompt and competent warranty service. While this can be achieved through improved warranty performance systems, we also expect that the rule will induce manufacturers to improve the quality of mobile homes so as to reduce the need for warranty service.

Survey data on the rulemaking record indicate that, in certain sections of the country, up to 40 percent of mobile homeowners appear to have been unsuccessful in having repairs completed under warranty. Thus, significant numbers of owners had to either pay for those repairs themselves or suffer inconvenience.

Industry compliance with the proposed rule may substantially reduce consumer repair expenditures and depreciation on the home during the warranty period. Moreover, consumers also may benefit significantly in subsequent years by inspections that provide early detection of potentially serious installation problems. Since such defects could lead to basic structural and systems failures, the proposed rule might improve the useful life of mobile homes significantly.

Second, the proposed rule may operate to induce warrantors to reduce customer claims by correcting the underlying causes of injury. For example, mobile home manufacturers and dealers may be able to reduce their potential compliance costs under the proposed rule by improving production quality control and ensuring that dealers have the equipment and skills to install

homes properly and correct problems quickly and competently.

#### Summary of Costs

Industry compliance costs can generally be assigned to one of two categories: (1) administrative and other overhead costs, and (2) additional repairs to mobile homes. Estimates of these costs are based in part upon an analysis of the records of four mobile home manufacturers who have been operating since 1975 under consent orders similar in terms to those of the proposed rule. (A consent order is an agreement between the Commission and a company in which the company agrees to change certain of its business practices. The agreement is not an admission of wrongdoing by the company.)

We estimate that, depending upon company size, from one to four professional workyears at the corporate headquarters level will be required to administer the warranty performance system and resolve disputes among consumers, dealers and the manufacturer. This represents a maximum per-home cost of about \$5.00 to \$15.00 for large manufacturers and \$15.00 to \$25.00 dollars for smaller producers, assuming that no corporate officials now work on warranty matters. Since most companies currently assign at least some corporate personnel to their warranty programs, the net cost increase should be substantially below these estimates.

The cost to manufacturers of evaluating capabilities of dealer repair service and entering into written contracts should be concentrated in the first year of compliance and therefore should not affect prices in the long-run. The cost of evaluating dealers should vary from roughly \$2.00 to \$15.00 per home. Responses from the companies currently under Commission order indicate that legal costs for drafting the written service contracts should not exceed about \$2.00 per home for the average-sized manufacturer.

Based upon the experiences of the consent order companies, the required customer questionnaires should cost no more than \$8.00 per home to print, distribute, and tabulate. Adding this figure to the other cost components we discussed above brings the total administrative compliance costs of the proposed rule to a maximum of \$50.00 per home.

Analysis of data from the companies under the consent order indicates that each of the required pre-occupancy inspections of mobile homes costs these manufacturers about \$50.00. Each of the reinspections costs them approximately

\$100. These estimates include reimbursements to dealers for travel and all inspection expenses, including releveling and minor repairs. This figure does not cover major repairs or general increases in warranty expenditures resulting from more diligent attention to customer complaints. It is difficult to estimate the magnitude of these increases in warranty costs, since the rule presumably could tend to motivate producers to lower the incidence of defective homes. Specifically, manufacturers can be expected to introduce quality control improvements whenever the cost is justified by expected future savings in warranty expenditures. In addition, the two required on-site inspections should permit dealers to spot and correct installation problems before costly structural problems result.

#### Sectors Affected

The proposed rule is intended to improve warranty service for the approximately 265,000 families who buy mobile homes each year. The proposed rule will affect the business practices of some 220 mobile home manufacturers (Standard Industrial Classification 2451) and approximately 10,000 independent mobile home dealers. We will ease overhead costs for smaller companies by exempting firms that produce fewer than 5,000 units annually from some of the administrative requirements of the rule. Furthermore, since the total number of inspections will depend directly upon the number of homes sold, large and small manufacturers will spend approximately the same amount per home to meet the inspection requirements of the proposed rule.

The proposed rule should not alter the competitive structure of the industry significantly. The Commission has investigated whether or not the proposed rule will encourage manufacturers to integrate vertically into retailing or enter into exclusive franchising arrangements with dealers. The rulemaking record indicates that even the largest manufacturers would find the capital costs of developing a national dealer network prohibitive. The record also documents that dealers would not find exclusive franchises viable. Since consumers generally do not select mobile homes on the basis of brand reputation, dealers currently compete for sales by offering the widest possible selection of homes in varying price ranges, sizes and floorplans. Exclusive dealing would necessarily limit the variety of homes that could be offered without giving dealers any compensating benefits.

#### Related Regulations and Actions

*Internal:* Four mobile home companies are presently required under Commission consent orders to establish effective warranty performance systems. Other cases have been brought against mobile home companies allegedly in violation of the warranty disclosure and labeling requirements of the Magnuson-Moss Act, § 101, *et seq.*, 15 U.S.C. § 2301 *et seq.*

*External:* The Department of Housing and Urban Development regulates the production of the mobile home at the factory under the National Mobile Home Construction and Safety Standards Act of 1974 (Title VI), 42 U.S.C. § 5401, *et seq.*

Some states require warranties in the sale of new mobile homes. A number of states license and bond mobile home dealers and manufacturers.

#### Active Government Collaboration

The Department of Housing and Urban Development and representatives from eleven State attorneys general offices participated in the rulemaking proceedings.

#### Timetable

Publication of staff report and proposed Final Rule—winter 1980.  
Public Comment—spring 1980.  
Commission Consideration—fall 1980.

#### Available Documents

NPRM—40 FR 2334, May 29, 1975.  
Final Notice—42 FR 26398, May 23, 1977.

The record of this proceeding is publicly available at the Office of Legal and Public Records Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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#### FTC

Proposed Trade Regulation Rule (TRR) on standards and certification (43 FR 57269, December 7, 1978)

#### Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

#### Statement of Problem

There are more than 20,000 private standards in existence that set requirements for products ranging from nuts and bolts to computers. These

product standards are set by trade associations, technical and professional societies, product testing laboratories, and other private sector groups. Generally, these standards provide significant benefits, such as lowering the cost of communications between buyers and sellers, improving the transfer of technology, encouraging efficiencies in design, production, and inventory, and assuring such things as the safety, fitness, and energy efficiency of products. However, substantial injury to consumers and competitors can occur when standards development or certification activities block the use of superior or lower-cost technology, prevent businesses from competing in profitable industries, establish inadequate or excessive product safety levels, inflate product prices, or deceive consumers about the quality of a product.

Complaints filed with the Federal Trade Commission (FTC) and testimony at rulemaking hearings show that injuries to consumers and competitors can occur for a number of reasons. For example, the procedures that some private standards-setting and certifying organizations use may be inadequate to prevent the process from being dominated by the interest of the producer at the expense of consumers and smaller businesses. Injury may also occur when certain private standards development and certification organizations fail to provide for an adequate examination of the potentially adverse market effects of their actions, or for fair consideration of all the interests that their activities affect. In addition, injury may occur when such organizations fail to respond to challenges to their standards in a fair and timely manner, for example, when they do not update standards in response to technological change.

The proposed rule is intended to reduce the incidence and severity of injuries to consumers and competitors that result from private standards development and certification activities. The proposed rule would require procedural safeguards to ensure that affected people have an opportunity for participation in the development or revision of standards. These procedural safeguards include a requirement that developers and certifiers of standards use procedures to permit aggrieved parties to challenge deceptive or arbitrarily restrictive standards. Finally, the rule provides that scope, intended use, and information on the product's hazards be given to users of standards and certifications.

#### Alternatives Under Consideration

Based on the record that is developing in the FTC rulemaking proceeding on standards which is now in progress, several alternatives are under consideration. The first set of alternatives includes several extensions or limitations on the proposed scope of coverage of the trade regulation rule (TRR). Those under consideration include: exclusion of smaller standard organizations from coverage; inclusion of only mandatory standards, for example, only those private standards that will be incorporated without further review into governmental regulations or procurement documents; exclusion of standards that are used primarily by manufacturers as a means of specifying materials or components to be used in production; inclusion of only consumer product standards; and exclusion of standards developed primarily by buyer (rather than producer) groups.

The second set of alternatives under consideration would result in changes to the structure of the proposed TRR. Possible changes include: extending the notice, participation rights, appeals, and other due process protections to require balanced participation by all affected interests in standards development; imposing higher burdens of proof on standards organizations or certifiers to justify the reasonableness of their actions when they are challenged; requiring standards organizations to pay the expenses of small business and consumer interests which could not otherwise participate in the process of developing standards; and making the decisions of private standards appeals boards binding on the standards organizations. Alternatives also include imposing on standards developers either routine procedural safeguards, or a self-regulated complaint mechanism to enable aggrieved parties to challenge restrictive or deceptive standards on a case-by-case basis. The present proposal would require both procedural safeguards and a complaint mechanism.

A third set of alternatives under consideration relates to approaches that would increase the flexibility that organizations would have in meeting the TRR compliance obligations. One of these alternatives would be to set out in general terms the enforcement objectives to be met (e.g., providing greater opportunities for effective participation in standards development by all affected parties) without specifying the precise means of compliance. A related alternative would be to set out one means of compliance, but permit alternative approaches that assure the same level of protections in

the standards process. Another alternative, in lieu of a TRR, would involve issuing an industry guide or statement of enforcement policy, in conjunction with enforcement on a case-by-case basis. In the latter case, we are reviewing other governmental reform efforts to determine whether their effects on consumer or competitive problems in private standards would reduce the need for direct FTC action. We are also exploring in the rulemaking process the effectiveness of recent industry attempts at self-regulation.

#### Summary of Benefits

Quantification of the benefits of a trade regulation rule on standards and certification is not feasible at this time because the Commission is still in the process of receiving information on the scope of the problem and the appropriateness of a range of possible remedies. Moreover, as is often the case, certain benefits which would derive from a rule, such as improvements in the availability of some types of information, may not be susceptible to quantitative measurement even though they are substantial. The difficulty of quantitative measurement is increased by the lack of any calculation of the aggregate beneficial or adverse impact of present standards development and certification activity.

We are receiving information on the adverse effects of specific standards and the potential benefits of the proposed rule in specific instances during the rulemaking proceedings. Entries in the rulemaking record explore a variety of situations which the rule may improve, such as the reduction of delays in standards revisions for residential energy devices which may reduce the amount of wasted energy, and the reduction of foot candle requirements in lighting standards which may reduce the costs of energy and lighting fixtures. After the proceeding is completed, analysis of these and additional case studies may suggest the type and potential magnitude of benefits to be derived from improving the operation of the private standards system.

The objectives of this TRR include elimination or reduction of the acts or practices involved in standards development and certification that lead to consumer and competitive injury. If a rule achieved this, it would result in a number of benefits. Entry into markets where entry is predicated on conformance to a standard or on certification would be facilitated. This would improve competition, which in turn would result in benefits to consumers, such as lower prices, an

improved-selection of products, and more rapid innovation. However, this beneficial effect on consumer prices may be partially offset if any of the new costs of standard setting imposed by the rule are shared with consumers.

The rule would also encourage an increase in the supply of useful information through standards. More diverse interests would be permitted to participate in the development of standards. This participation may encourage a more complete and accurate consideration of the costs and benefits of standards and a more equitable allocation of these costs and benefits. Potentially, users of standards could become more aware of the meaning and usefulness of a particular standard or certification. Given better information, users of standards and certifications, including users of the product subject to the standards, would be able to make more informed choices based on quality and price.

#### Summary of Costs

The specific direct and indirect costs of FTC action to eliminate unfair or deceptive acts and practices are not quantifiable at this time because we are considering a number of alternate remedies and we have not closed the rulemaking record. In addition, as is the case with certain benefits of the proposed rule, there are a number of effects that may be impossible to quantify. However, it is possible to generalize at this time about potential costs and distribution of costs of the proposed rule and of some of the alternatives.

The proposed rule could increase the direct costs of producing a standard. Any standards developer that has to revise its procedures to comply with the rule would bear the costs of transition. Standards developers that did not already provide the aspects of due process that the proposed rule would require would have the ongoing costs of providing the additional notice, participation rights, complaint and appeals mechanisms, and recordkeeping that would be necessary. These costs would presumably be passed on to members of standards development organizations in the form of dues and to the users of standards in the form of higher purchase prices for the standards documents, and might be reflected in the prices consumers paid for products. However, it should be noted that these costs should not be counted at each point in the chain of use, since that would result in over-estimates of the final cost. The actual costs of any regulation will depend on the final form of the regulation as well as on the

present practices of those covered by such a regulation.

The proposed rule may also add indirectly to the cost of standards development. A great deal of the present cost of standards development is borne by private groups or individuals who participate because of their perception of their individual benefits from doing so. To the extent that the rule changes the benefits which individuals derive from participation, it would affect the mix of participation. Individuals would have to reevaluate the cost and benefit of their participation. It is not possible at this time to conclude whether the amount of such participation would be greater or lesser as a result of the rule. An indirect effect of the proposed rule might be to reduce the number of standards produced as a result of the increased cost of standards development. A loss of socially beneficial standards might occur in such a case. Finally, the proposed rule may change the structure of the standards development industry if it reduces the number of small-scale standards developers because of the higher costs of standards development.

The cost of certification might be affected in several ways. To the extent that more information is required with certification there may be additional costs of printing. If information is required that does not already exist, there would be costs associated with obtaining that information. A requirement that a certifier take some action when it learns of misuse of its certification would add costs to the extent that the action required differs from present practice. There may also be increased effects on certification related to recordkeeping and appeals. An increase in certification costs would result in higher charges for certification services. This would presumably result in higher prices of certified products or reduction in the use of certification.

#### Sectors Affected

Consumers of products involving standards or certifications would be affected by a trade regulation rule which seeks to eliminate injurious and unlawful practices found in product standards development or certification activities. A rule would directly affect over 400 non-governmental standards development and certification organizations that provide the technical foundation for transactions involving complex goods. The impact on an organization that provides this intermediate service in commerce could range from insignificant to substantial, depending on the shape of any regulation and the present practices of

the organization. Manufacturers could be directly affected when using standards and certifications in marketing products. Manufacturers and consumers could be affected by any changes in the complaint and appeals processes of standards developers and certifiers that would increase the availability of effective challenges to standards or certification activities. Manufacturers and consumers would also be indirectly affected by any change caused by a rule on the amount and quality of information. Finally, the great number of governmental officials at all levels who rely in whole or part on privately developed standards and certifications for procurement or regulation would be affected by any change in the amount and quality of information provided by standards and certifications, and by any change in the availability and cost of products covered by standards or certifications.

#### Related Regulations and Actions

*Internal:* None.

*External:* The Office of Management and Budget (OMB) has proposed a circular which would establish government-wide policy for Federal employee participation in private standards activities. Only organizations following specified due process criteria in their standards development activities would be eligible for Federal employee participation. The circular would advise Federal agencies of any OMB findings of adverse competitive effects that result from product standards that are used as a basis for government procurement or regulation.

The Tokyo Round trade agreements to reduce tariff and nontariff barriers to trade have now been implemented in the United States by legislation (regulations will follow). One of these, the Code of Conduct for Preventing Technical Barriers to Trade ("Standards Code") places obligations on the U.S. to reduce barriers to trade that are created by Federal, State, local government, and private sector standards. Commission staff are having discussions with representatives of the President's Office of the Special Representative for Trade to assure coordination and policy consistency in the Standards Code and FTC enforcement efforts.

#### Active Government Collaboration

Representatives of several offices of the Federal government, including the Food and Drug Administration, the Department of Justice, the White House Office of Consumer Affairs, and the National Institute for Occupational Safety and Health, as well as several state and local officials, have submitted

comments during the rulemaking proceedings. FTC staff has made numerous presentations relating to the proposed rule to the Department of Commerce-sponsored Interagency Committee on Standards Policy and its subcommittees.

#### Timetable

Rebuttal Submissions to the Record—  
on or before Dec. 1, 1979.  
Staff Report—Summer 1980.  
Presiding Officer's Report—  
approximately 60 days after Staff  
Report.  
Post-record comments—  
approximately 60 days after  
Presiding Officer's Report.  
Commission Consideration—1981.

#### Available Documents

NPRM—43 FR 57269, December 7,  
1978.

FTC Staff Report on Standards and  
Certification available at Room 130,  
Federal Trade Commission, 6th and  
Pennsylvania Ave., N.W., Washington,  
D.C. 20580.

Public record documents relied on by  
staff in preparing the Staff Report,  
available at Room 288, Federal Trade  
Commission.

Rulemaking record and public record  
of the rulemaking hearings held May 21  
through September 21, 1979 available at  
Room 130, Federal Trade Commission.

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#### FTC

#### Rulemaking on children's advertising Legal Authority

Federal Trade Commission Act, §§ 5  
and 18, 15 U.S.C. §§ 45 and 57(a).

#### Statement of Problem

In response to petitions filed in 1977  
by Action for Children's Television and  
the Center for Science in the Public  
Interest, the staff of the Federal Trade  
Commission's (FTC) Bureau of  
Consumer Protection began a factual  
and legal inquiry into television  
advertising directed at children. In  
February 1978, a staff report was made  
public which concluded that the  
important legal and public policy issues  
raised by the petitions warranted a full  
inquiry into the need for the FTC to  
adopt a rule concerning children's  
advertising. On April 27, 1978 the  
Commission published an NPRM.

The objective of the rulemaking  
proceeding is to determine whether

television advertising directed at  
children is unfair or deceptive within the  
meaning of § 5 of the Federal Trade  
Commission Act, and, if so, what  
remedies are appropriate. The inquiry  
addresses two main issues: (1) whether  
television advertising directed to  
children who are too young to  
understand its selling purpose, or  
otherwise comprehend or evaluate it, is  
unfair or deceptive; and (2) whether the  
television advertising of sugared  
products directed to children is unfair or  
deceptive.

Television advertising directed to  
children is a pervasive phenomenon in  
children's lives. In 1977, the average  
American child ages 2 through 11  
watched over 25 hours of television per  
week, or more than 1,300 hours per year,  
more time than many children spend in  
the classroom.

In that same time span, the child  
would have seen over 20,000 television  
commercials—as many as half of which  
appear to be specifically directed to  
children. Television is considered an  
important marketing device by those  
industries which advertise to children:  
approximately one-half billion dollars  
per year is spent on television  
advertising directed to children. The  
majority of this advertising is for  
sugared products, fast-food restaurants,  
and toys.

Television advertising may be unfair  
and deceptive to young children because  
they have not yet developed the  
defenses which enable adult consumers  
to evaluate an advertising message  
before deciding to purchase a product or  
service. Furthermore, television  
advertising directed to children appears  
to use techniques designed particularly  
to increase the commercial's impact and  
influence upon the child, including such  
techniques as fantasy and hero figures  
presenting products, authoritative voices  
stressing the products' qualities,  
sophisticated camera angles, and skillful  
editing.

Television food advertising directed  
to children consists largely of  
advertisements for sugared food  
products, such as candies and  
presweetened cereals. Studies indicate  
that children request, purchase, and  
consume the food products that this  
advertising promotes. These  
advertisements may be deceptive or  
unfair to urge them to consume foods  
which contain sugar without informing  
them of the nutritional and dental  
implications of such foods.

There is a general consensus among  
dental health experts that frequent  
consumption of foods which contain  
sugar is associated with the current high  
incidence of caries (tooth decay) among

children. Tooth decay is a serious health  
problem among children.

In addition to the adverse  
consequences to dental health, the  
excessive consumption of foods  
containing sugar may adversely affect  
the nutritional quality of a child's diet.  
Most experts believe that sugar provides  
no nutritional benefit other than  
calories. Deriving a high portion of one's  
calories from sugar dilutes the  
nutritional adequacy of a diet. Many  
experts believe that young children's  
nutrient needs for growth are  
proportionally higher than adults. A diet  
containing a high portion of calories  
from sugar is also likely to contribute to  
obesity.

#### Alternatives Under Consideration

As we stated in the NPRM, the FTC is  
soliciting comment on what remedies  
are appropriate. Among others, such  
remedies might include the following:

(a) Eliminate all televised advertising  
for any product which is directed to, or  
seen by, audiences composed of a  
significant proportion of children who  
are too young to understand the selling  
purpose of or otherwise comprehend or  
evaluate the advertising;

(b) Eliminate televised advertising for  
sugared food products directed to, or  
seen by, audiences composed of a  
significant proportion of older children;  
the consumption of these products poses  
the most serious dental health risks;

(c) Require televised advertising for  
sugared food products not included in  
paragraph (b), which is directed to, or  
seen by, audiences composed of a  
significant proportion of older children,  
to be balanced by nutritional and/or  
health disclosures funded by  
advertisers;

(d) Require placement of affirmative  
disclosures in the body of  
advertisements directed to children for  
sugared food products which pose  
serious dental health risks;

(e) Limit particular advertising  
messages used and/or techniques used  
to advertise to very young children, or to  
advertise sugared food products which  
pose serious dental health risks to  
children;

(f) Limit the number and frequency of  
advertisements directed to very young  
children, and/or limit the number and  
frequency of all advertisements directed  
to children for sugared food products  
which pose serious dental health risks.

#### Summary of Benefits

It is not feasible at this time for the  
FTC to quantify the benefits of a rule on  
children's advertising, because the  
Commission is still in the process of  
receiving information about the scope of

the problem and what remedies are appropriate. Moreover, certain benefits which would result from any rule (e.g., diminishing "deception" in ads directed toward young children) cannot be measured quantitatively. Finally, the extent of the benefits will be related to long-term response of the market (e.g., industry and consumers) to any selected remedy. More particularly, benefits would be affected by whether advertisers shifted to alternative media or products and whether consumers shifted their patterns of consumption. Assuming that the Commission determines that advertising directed at children is unfair or deceptive, the benefits that would result would come from the elimination of that deception or unfairness.

As we discussed above, the techniques used in advertising directed at children, taken together with the limitations of young children, may lead to a misperception of the attributes of advertised products, thereby creating a discrepancy between the child's expectations for an actual experience with the product. Moreover, if young children overvalue television advertising as an authoritative source of information, they may discount or ignore other information. The objectives of regulation might include reducing the prevalence of these problems and changing the quality and/or quantity of consumer information available to young children.

With respect to the advertising of sugared food, providing nutrition and dental health information, reducing the stimulation to consume sugar-containing foods, and/or suggesting more healthful meal and snack food choices, may result in: (a) increased nutrition and better dental health attitudes among children, (b) a reduction in the amount and frequency of consumption of advertised sugared products, in particular, and sugar-containing foods, in general, and/or (c) substitutions of more nutritious food products in place of those food products which pose serious dental health hazards and which are of limited nutritional value. The proposed rule could thus result in the improvement of children's dental health and nutritional wellbeing. This, in turn, could result in a reduction in dental and health care costs.

#### Summary of Costs

As we set forth above, the FTC is still in the process of receiving information about the scope of the problem and what remedies are appropriate. The amount of currently available television advertising that a rule would affect and, therefore, the cost of the regulation, will

vary with the remedial approach we ultimately take. The amount of commercial advertising time on television that the rule affects will also be determined by the scope of a given remedy. For example, if advertising directed to children is defined as advertising appearing in programs or at times in which at least 50 percent of the audience is composed of children between two and eleven, then less currently available commercial time will be affected than if a "30 percent of the audience" definition is used. Thus, we can make no specific estimates of the cost of regulation at this time.

However, the following discussion will examine the possible economic effect of a rule on various sectors of the economy by considering the distribution of effects among these sectors. Two points are important. First, such an approach may suggest an overestimate of the cost, since there may be a double counting of costs at various points on the distribution chain. For example, if a remedy causes any increase in production or marketing costs of a product with a resulting increase in the retail price of the product, we state this as a cost to the manufacturer, the retailer, and the consumer. Secondly, by highlighting short-run costs, the analysis may overstate the long-run response of the market to any rule. Such long-term responses may include shifting advertisements to times or programming that the rule does not affect, using alternative advertising media; changing product preference, e.g., from presweetened cereals to non-presweetened cereals; or shifting sponsorship for children's programming.

Assuming that a rule would in some way restrict advertising directed to children, it would directly affect the advertisers who must comply with it. These advertisers could include manufacturers of presweetened cereals, candy and other sugared foods; manufacturers and retailers of toys; and fast-food outlets. A direct effect may be a decrease in currently available advertising time for such products. Indirect effects may include an increase in media costs and a decrease in the total sales of the products that the rule affects. Assuming that these indirect effects occur, there may also be an effect on the profits of manufacturers and retailers. Increased production or distribution costs may also translate into higher retail prices to consumers.

Such a rule could also have an economic effect on television broadcasters, including stations, cable operators, and networks. This could include a decrease in demand for

advertising time on children's programs due to restrictions on advertising to children. The direct effect may be a loss of some advertising revenues. An indirect effect to the consumer may be changes in the quantity and quality of programming.

However, as we discussed above, any short-run adverse economic effect on broadcasters, advertisers, or other groups the rule affects may well be offset by long-term market adjustments.

We cannot assess the cost of compliance with and enforcement of the rule at this time. These costs will depend upon the particular remedial approach that the Commission chooses.

#### Sectors Affected

##### (A) Consumers:

A rule which eliminates any deceptive or unfair practices found in television advertising directed to children would affect both children and their parents. By eliminating such deception and unfairness, a rule could reduce the possible harm to children that is associated with this advertising. By improving the source of product information the rule would promote more efficient allocation of family resources. Moreover, insofar as it promotes a reduction in dental and other health care problems and their attendant costs, the rule will benefit parents and children.

##### (B) Industry:

The regulation will directly affect those firms which would otherwise advertise at times that the regulation covers, or whose products are covered by the regulation. It may also indirectly affect the commercial television broadcast industry, including the three major networks, network affiliates, independent broadcasters, and cable operators. In addition, the regulation may affect the producers of children's programming and advertising if it alters the demand for that programming or advertising.

#### Related Regulations and Actions

##### Internal: None

##### External: The Federal

Communications Commission has recently re-opened its 1974 inquiry into children's programming and advertising. The United States Department of Agriculture has recently proposed regulations that limit the sale of highly sugared products and other snack items which compete with foods served as components of the school lunch.

#### Active Government Collaboration

Representatives from several offices of the Department of Health, Education and Welfare, including the Food and

Drug Administration, the Office of the Assistant Secretary for Health, and the National Institutes for Dental Research, submitted comments during the legislative hearing phase of the proceeding that emphasize the need for regulation in this area.

#### Timetable

Commission designates issues for second-phase adjudicative hearings—winter 1979-1980.

Adjudicative hearings—approximately two months later.

Staff Report—approximately three months after close of hearings.

Presiding Officer's Report—approximately two months after Staff Report is issued.

Post-record comment period—approximately 30 days after the Presiding Officer's Report is issued.

Commission Consideration—1981.

#### Available Documents

NPRM 43 FR 17967, April 27, 1979.

FTC Staff Report on Children's Advertising. The entire rulemaking record is available for inspection by the public in Room 130 of the main building of the FTC, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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#### FTC

#### Trade regulation rule concerning credit practices

#### Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

#### Statement of Problem

Most Americans make use of consumer credit at some time in their lives. At any given time about half of all households are making payments on installment debt. Many of them encounter financial or other problems which cause them to become delinquent in their payments. Only rarely is such delinquency intentional. Studies show that the leading causes are such unplanned events as unemployment, illness, and circumstances in which the consumer is overburdened with debt obligations.

When debtors default they become subject to a variety of legal "remedies"

that creditors use to collect money. Many creditor remedies are appropriate collection devices. Certain others, however, inflict injury on debtors that may be disproportionate to the gain to creditors. The injury includes not only dollar losses, but also nonpecuniary harm such as emotional distress, loss of privacy, and disruption of family relationships. The disproportionate nature of the injury may mean that many consumers may be obtaining credit on terms that they would not choose in a market in which more complete information about credit terms was available.

The right of creditors to use remedies derives largely from provisions included in credit contracts. Credit contracts are standardized form documents prepared by creditors. There is generally no bargaining over terms between debtor and creditor.

Most consumers cannot shop for credit terms because they lack the specialized legal knowledge necessary to understand and evaluate remedy terms in contracts. Furthermore, creditors usually do not compete with each other with more favorable remedy terms of contracts, and therefore in a given market consumers will find little variation in such terms. All these factors indicate that market forces have not produced an optimum balance of creditor and debtor rights in credit contracts.

Specific contractual and other creditor remedies which may cause injury to consumers and which are in widespread use include the following:

(1) *Confession of judgment*—The debtor signs a form which authorizes the creditor to obtain a court judgment against him without notice to the consumer and without any opportunity for the consumer to appear and defend himself. The debtor thus loses due process rights such as the ability to contest disputed claims.

(2) *Waivers of state property exemptions*—The debtor waives the right, granted by State law, to keep certain minimal property if a court judgment is obtained against him. In many states, a court will not honor the waiver; however, some creditors nonetheless have used this waiver to threaten debtors with loss of all their goods.

(3) *Wage assignments*—The debtor authorizes the creditor to seize a portion of his wages without first obtaining a court judgment. The debtor loses the ability to contest disputed claims. Moreover, some debtors are subject to disciplinary action or firing by employers who do not like to divide employee wages between a creditor and

an employee because of the accounting costs this imposes.

(4) *Blanket security interests in household goods*—These security interests give the creditor the right to take all of the debtor's household goods in the event of default. Because in many instances such goods may have little resale value, it appears that creditors use security interests primarily to threaten the debtor.

(5) *Cross-collateral security interests*—These security interests allow a merchant to take all goods that a consumer has purchased from that merchant over an extended period of time in the event of the consumer's failure to pay for a single purchase.

(6) *Deficiencies*—Following the repossession and sale of collateral, the creditor can sue the debtor for a deficiency, i.e., the difference between the sale price of the product and the amount the consumer owes. In many instances, the sale prices of repossessed collateral are very low, resulting in large deficiencies.

(7) *Attorney's fee provisions*—The provisions require the debtor to pay the creditor's attorney's fees. They thus tend to inhibit debtors from defending themselves against payment of disputed debts. In a significant number of instances, attorney's fees assessed by courts are larger than actual court costs.

(8) *Late charges*—Late charges are penalty fees that the creditor assesses when the debtor fails to pay an installment on time. Sometimes they are "pyramided," i.e., a creditor allocates payments in such a way that a single late or missed payment may result in the debtor being assessed a late fee on all subsequent installments.

(9) *Third party contacts*—Creditors make a significant number of contacts for debt collection with third parties, such as relatives, neighbors, or the debtor's employer. Such contacts may tend to invade privacy and may harm the employment relationship and lead to job loss.

(10) *Cosigners*—Creditors sometimes have the debtor obtain one or more cosigners who agree to pay the debt if the principal debtor does not. Cosigners frequently do not understand that the obligation they undertake is substantial.

#### Alternatives Under Consideration

The rule that the Commission initially proposed on April 11, 1975, would ban a number of the above creditor remedies and restrict the use of others. It would prohibit or limit: confessions of judgment, waivers of state property exemptions, wage assignments, nonpurchase money security interests in household goods, and attorney's fee

provisions. Creditors would have to promise in the contract not to make third party contacts except to locate the debtor or his property. The Commission would permit cross-collateral security only if creditors released collateral from the security agreement as the consumer paid for it in the order it was purchased by the consumer. Creditors could collect deficiencies only if they credited the debtor with the fair market retail value of the collateral. Late fees would be limited. Cosigners would have to be given a notice explaining their obligation and a three-day "cooling off" period to evaluate that obligation. Creditors would also be required to give cosigners copies of relevant documents, to notify cosigners in the event of default by the principal, and to make serious efforts to collect from the principal before seeking payment from the cosigner.

Following publication of the NPRM, members of the public (including many members of the credit industry which would be affected by the rule) have suggested numerous modifications, alternatives, exceptions, and deletions to virtually every provision of the proposed rule. The Commission will consider these alternatives and will decide what form of rule, if any, it ultimately should promulgate.

#### Summary of Benefits

Although at the present time the Commission does not know what form of rule, if any, it will adopt, it is possible to predict the type of benefits which would result if it promulgates certain provisions of the proposed rule. For example, several provisions of the proposed rule would, if adopted, produce dollar benefits for consumers by eliminating requirements to pay excessive deficiencies and late fees. If the final rule eliminates collection methods which result in injury to the employment relationship, it would benefit consumers by protecting their employment security. Eliminating practices by which creditors evade due process requirements would increase the fairness with which creditors treat consumers and would improve consumers' ability to protect themselves against fraud.

An important qualitative benefit of any final rule should simply be fairer treatment of people suffering from financial difficulties. Practices the proposed rule addresses now result in such individuals being threatened unfairly with the loss of all their possessions, loss of their jobs, and harassment of their friends and relatives.

Quantitative information relevant to an assessment of current injury to consumers is available for a number of provisions of the proposed rule. For example, evidence in the rulemaking record indicates that over 60,000 consumers have wage assignments filed with their employers each year. One source estimates that use or threatened use of wage assignments results in loss of employment 10 percent to 20 percent of the time, at least for low income consumers. Next, well over ten million consumers are subject to contracts containing blanket security interests in household goods. Creditors sometimes make an implicit or explicit threat to repossess when such borrowers become seriously delinquent. We estimate, using the rulemaking record, that creditors make threats to repossess to at least several hundred thousand borrowers each year. Finally, over 750,000 automobiles are repossessed each year. In most cases where an auto is repossessed it is sold at less than its wholesale value and the consumers continue to owe the creditor money. The amount owed totals over \$400 million. The provision of the proposed rule relating to deficiency judgments, if adopted, may significantly reduce this amount.

#### Summary of Costs

Costs of any rule to consumers may potentially take two forms: increases in the price of consumer credit and reductions in availability of credit to certain consumers.

The rulemaking record contains empirical economic evidence based on data in states with credit laws similar to the proposed rule. These economic studies and other information on the record provide an imprecise estimate of the effect a rule would have on the cost of credit. This evidence suggests that adopting the rule in its originally proposed form may cause no more than a very small increase in the annual percentage rate of loans made by finance companies in states with no existing regulation.

Testimony by State officials, some creditors, and others who have experience in states with laws similar to the proposed rule indicates that prohibitions on the covered creditors' remedies have not had discernible impact on either the cost or availability of credit in those states.

In the staff's opinion, an examination of the reasons for consumer default reinforces conclusions based on economic studies and testimony. Evidence on the record demonstrates that most delinquency results from

debtors' inability to pay rather than their unwillingness to repay.

The main costs of creditors' compliance with any rule should be those associated with revising contract forms and instructional materials that they give their employees. They will have to do these tasks only once. Creditors can spread the costs over all subsequent transactions; costs will therefore be low on a per transaction basis. While the rule restrains creditor remedies, the evidence suggests that such restraints will not prevent creditors from collecting debts.

#### Sectors Affected

The primary beneficiaries of any rule would be users of consumer credit who have difficulty repaying their debts. The rule will not prevent debtors from being compelled, when necessary, to pay legitimate debts, since it seeks to limit only unjustified injury of consumers during the debt collection process.

The costs of any rule will fall on the consumer credit markets. A rule is likely to affect large creditors and small creditors in similar ways. However, there is reason to believe that any rule will have (1) less effect on small creditors because of their personal relationship with their customers and therefore more limited reliance on the practices in question, and (2) greater effect on finance companies.

A rule will not impose any direct requirements on State and local governments. However, the cosigner proposals requiring disclosure would preempt several State laws.

#### Related Regulations and Actions

*Internal:* None.

*External:* If the Commission decides to adopt the proposed rule, the Federal Reserve Board is required by § 18 of the FTC Act to consider adopting a substantially similar rule for banks.

Most states have laws similar to one or more provisions of the proposed rule. A small number of states—including Connecticut, Iowa, and Wisconsin—have laws similar to most provisions of the rule, though they differ in detail.

#### Active Government Collaboration

Federal, State, and local government agencies participated in the rulemaking proceeding. Representatives of over half of the states testified at hearings, along with a number of local government officials. A number of the staff of the Federal Reserve Board also testified. The Commission received written comments from additional government agencies including, among others, the Department of Defense, the National

Credit Union Administration, and several State and local agencies.

#### Timetable.

Publication of Staff Report—winter 1980.

Public Comment—spring 1980.

Commission Consideration—summer 1980.

#### Available Documents

40 FR 16347, April 11, 1975.

Final Notice Concerning Proposed Trade Regulation Rule, 42 FR 32259, June 24, 1977.

Report of the Presiding Officer—August 1978.

Copies of these documents can be obtained from the Office of Legal and Public Records, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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#### Chapter 6—Transportation and Communication

DOC-MARAD	
Operating-differential subsidy for bulk cargo vessels engaged in worldwide service; essential service requirement (46 CFR 252.21)	68338
DOT-FHWA	
Certification of vehicle size and weight enforcement..	68339
Design standards for highways—geometric design standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways	68340
Interstate maintenance guidelines	68341
Withdrawal of Interstate segments and substitution of alternative transportation projects	68342
CAB	
Air Carrier Fitness	68343
Air Carrier Insurance and Liability	68344
Essential Air Service Subsidy Guidelines	68344
Ptair English for Airline/Passenger Contracts	68346
FCC	
Creation of New Personal Radio Service (PR Docket 79-140)	68346
Deregulation of Competitive Domestic Telecommunications Market (CC Docket 79-252)	68347
Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation (BC Docket 79-219)	68348
FMC	
Amendment to financial reports by common carriers by water in the domestic offshore trades	68349
Amendments to tariff requirements for controlled carriers	68350
Certification of company policies and efforts to combat rebating in the foreign commerce of the United States	68351
Filing of agreements by common carriers and other persons subject to the Shipping Act of 1916	68352
Revision of the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders"	68353
Surcharges under dual-rate contracts on less than ninety days' notice	68353

#### ICC

Improvement of TOFC/COFC Regulation (Ex Parte No. 230 (Sub-No. 5))	68354
Intercorporate Hauling (Ex Parte No. MC-122—)	68356
Western Coal Investigation—Guidelines for Railroad Rate Structure (Ex Parte No. 347)	68357

#### PRC

Postal Rate Commission Docket MC79-2 to consider a request of the U.S. Postal Service for the establishment of an Express Mail Metro Service subclass filed with the Commission on December 7, 1978	68358
Postal Rate Commission Docket MC79-3, instituted by the Commission pursuant to 39 U.S.C. § 3623(b), to hear evidence on the preferential treatment, commonly referred to as "red tag" treatment, afforded certain time-value publications sent as second-class mail	68306

#### DEPARTMENT OF COMMERCE

##### Maritime Administration

**Operating-differential subsidy for bulk cargo vessels engaged in worldwide service; essential service requirement (46 CFR 252.21)**

##### Legal Authority

Merchant Marine Act, 1936, as amended §§ 204(b), 601(a) and, 211(b), 46 U.S.C. §§ 1114(b), 1171(a), 1173(a), and 1121(b).

##### Statement of Problem

The Maritime Administration (Marad) provides operating-differential subsidy (ODS) payments to American ship operators engaged in the foreign trades of the United States for which subsidy is paid. The ODS program seeks to equalize the disparity in operating costs between costs between American ships and their foreign counterparts. In October 1970, bulk cargo vessels engaged in the essential foreign trades became eligible for ODS payments. "Essential" trades refer to those bulk cargo carrying services that have been determined by the Secretary of Commerce to be vital to the promotion, development, expansion, and maintenance of the foreign commerce of the United States and to the national defense requirements, and thus should be provided by United States-flag vessels. Bulk cargo vessels generally provide on-demand services and seldom operate on a scheduled basis over given routes. Because of the nature of their operations, these vessels are frequently referred to as tramp carriers. Because these carriers must be able to go where cargo is available, the "essential foreign trade" for tramp bulk carriers includes foreign-to-foreign point shipments as well as shipments to and from the United States. Marad wrote into the existing tramp bulk carrier regulations a contractual requirement that they carry a certain percent of their cargo to and from U.S. ports in order to ensure that

the subsidized bulk operations promoted the foreign trade of the U.S. The original provisions of this program authorized ODS payments according to the following agreement: Bulk carriers that carried less than 30 percent of their cargo in the U.S. foreign trade would not receive any subsidy; bulk carriers that carried 30 percent or more but less than 40 percent of their cargo in the U.S. foreign trade would receive 40 percent of the total allowable subsidy payments; those carriers that carried 40-50 percent of their cargo would receive 70 percent of the subsidy payments, and those carriers that carried more than 50 percent of their cargo in this trade would receive 100 percent of the subsidy payments. This criterion was published on September 22, 1975 (46 CFR 252.21).

Effective December 31, 1977, Marad temporarily suspended enforcement of the U.S. trade percentage restriction to evaluate the continued need for this requirement. It has extended this waiver twice.

Experience since this suspension has shown that subsidized tramp bulk operators tend to carry a high percentage of their cargo to and from U.S. ports, even without the contractual obligation to do so. The percentage of total ton-miles in foreign-to-foreign trades for long-term ODS bulk carrier operators has shown a modest increase since this requirement was temporarily suspended: 1976 (15.4 percent), 1977 (14.3 percent), 1978 (19.4 percent).

The continued existence of this contractual restriction constrains the operations of U.S.-flag bulk carriers and thus places U.S. operators at a competitive disadvantage. In order to be competitive, U.S. bulk ship operators must be able to carry their cargo from any point of origin to its commercial destination. The proposed amendment to the regulation would permanently eliminate any geographic operating restriction in existing ODS contracts for bulk carriers.

##### Alternatives Under Consideration

Possible alternatives to permanently abolishing the U.S. trade percentage restriction include (1) reinstating the original restriction, and (2) reinstating the restriction, but perhaps lowering the restriction somewhere below the current minimums.

Marad feels that eliminating the U.S. trade restriction altogether is the preferable option. The other two alternatives would continue to limit the ability of U.S. operators to compete with foreign-flag operators.

The major issue in the proposed modification of the regulation is to balance the interests of the U.S.

Government in making sure that subsidy funds are used to promote the foreign commerce of the U.S. against the impact and cost of geographic restrictions that limit the ability of U.S.-flag operators to compete with foreign-flag operators.

Since subsidized tramp bulk operators have been carrying a large percentage of their cargo to and from U.S. ports without being required to do so by contract, the U.S. Government can expect that subsidy funds will continue to be used to promote the foreign commerce of the U.S. upon elimination of the trade restriction. The proposed amendment to this regulation is in essence an effort toward "deregulation". This measure is in keeping with Marad's continuing efforts to reduce the complexity of ODS requirements and increase the flexibility of subsidized operators. Reinstating U.S. trade restrictions will serve only to limit the flexibility and competitiveness of U.S. bulk operators, and, in turn, increase their reliance on subsidy payments.

#### Summary of Benefits

The proposed amendment to this regulation is expected to benefit U.S. bulk cargo operators by increasing their flexibility with regard to foreign-to-foreign trade participation and increasing their competitiveness with foreign-flag operators. In addition, the elimination of this trading restriction would result in savings to the subsidized operators and modest savings to the Government, since it would eliminate the administrative expenses incurred in monitoring the participation level of each subsidized operation.

#### Summary of Costs

With respect to subsidy payments to U.S. bulk cargo operators, we do not expect the proposed elimination of the trading restriction to generate any additional costs to the U.S. Government. We do not expect the dollar amount of subsidy payments to U.S. bulk cargo operators to change if we eliminate the U.S. trade restriction. While this restriction has been temporarily suspended, bulk operators in general have carried a large portion of their total cargo within the U.S.-foreign commerce. Bulk cargo operators would continue to seek as much U.S. import-export cargo as possible. Elimination of costly crew repatriation costs, the convenience of U.S. maintenance, and the availability of parts in the U.S. repair facilities are significant economic incentives for these operators.

However, there is a relative indirect cost associated with the proposed regulation. To the extent that U.S. bulk cargo operators participate in foreign-to-

foreign trade, there is a greater outflow of U.S. dollars to foreign ports than would occur if the U.S. operator engaged instead in the U.S.-foreign trade.

However, the overall impact of this regulation will be positive. These foreign-to-foreign operations do generate revenue for U.S.-flag operators which they would not realize if U.S.-flag carriers were unemployed due to the U.S.-foreign trade constraint. The Marad staff believes that the proposed amendment will result in a steady demand for U.S. bulk carrier services which will ensure steady employment and revenue for U.S. bulk carrier operators. Even though the outflow of U.S. dollars would be greater, it would be more favorable to allow U.S.-flag bulk carrier operators to engage, unrestricted, in foreign-to-foreign trade where their chances of employment are greatest than to limit their foreign-to-foreign trade and risk unemployment of the vessels. When subsidized operators are unable to procure any employment that satisfies the provisions of the regulation their vessels are inactive, because the cost of not using the vessels is less than the cost of operating the vessels without subsidy. There is a substantial reduction in employment opportunities for U.S. seagoing personnel under these circumstances.

#### Sectors Affected

The proposed amendment to the regulation under consideration will directly affect U.S.-flag bulk carrier operators. These operators would be more flexible and would become more competitive with foreign operators with the permanent elimination of the essential service requirement. There would be increased employment opportunities for these operators.

The proposed amendment may indirectly affect U.S. shipyards, since U.S.-flag bulk carrier operators would become more competitive and have greater employment potential. This boost to the U.S. bulk cargo shipping trade may result in an increase in new orders or reconstruction for bulk carriers.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

None.

#### Timetable

Final Rule—November 1979.

#### Available Documents

The following documents may be obtained from the Maritime

Administration, Office of Subsidy Contracts, Washington, D.C. 20230:

Modification of the trading restrictions contained in the regulations governing the payment of operating-differential subsidy (ODS) to bulk operators, 46 CFR 252, and the respective ODS agreements.

Memorandum for Maritime Subsidy Board/Assistant Secretary of Commerce for Maritime Affairs, March 3, 1978.

U.S.-flag subsidized bulk operators—foreign-to-foreign trading restrictions; Memorandum for Maritime Subsidy Board/Assistant Secretary of Commerce for Maritime Affairs, October 1978.

Public comments on proposed regulations relating to the essential service requirements imposed upon bulk vessel operators, July 1979.

Regulatory Analysis—November 1979.

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Certification of vehicle size and weight enforcement

#### Legal Authority

Federal-aid Highway Amendments of 1974, §§ 106, and 107, 23 U.S.C. §§ 127 and 141. Surface Transportation Assistance Act of 1978, P.L. 95-599, §§ 161, and 123, 92 Stat. 2689.

#### Statement of Problem

The need for highway maintenance, which is the responsibility of the States, is increasing much more rapidly than the Federal Highway Administration (FHWA) and the States anticipated it would when the highways were constructed. Inflation has sent maintenance costs soaring and reduced the amount of work that the States can accomplish with the money available. This has created an undesirable backlog of deferred maintenance for many States. Accelerating pavement deterioration, which is partially due to increasing amounts of vehicular traffic, particularly heavy trucks, also increases maintenance needs. On many sections of the Interstate and other highway segments current traffic volumes have exceeded the volumes the roads were designed to accommodate.

While legally loaded trucks contribute to the inevitable process of pavement deterioration, this fact is accounted for in pavement design. Regular operation

of trucks with loads above the current legal limits, some of them operating legally under special permits, or operation above the weight limits in effect during pavement design also greatly accelerate the rate of pavement deterioration. The latter case would be a factor in those States that opted to increase their axle and gross weight limits as a result of the Federal-Aid Highway Amendments of 1974. All of this forces maintenance work or reconstruction sooner than was originally planned, administratively and financially.

The objective of the proposed regulation is to cause each State to document the effectiveness of its vehicle size and weight laws.

#### Alternatives Under Consideration

The FHWA considered three alternatives in developing the NPRM that was published in the Federal Register on March 14, 1979. They were to:

(1) rescind present regulations which require the submission of substantial data on enforcement and require only a statement by the State that the laws were enforced;

(2) adopt a purely quantitative approach to evaluate enforcement in each State in terms of the number of weighings, arrests, etc., (actually only an expansion of present regulations);

(3) use an "action plan" approach. Each State would develop annually a size and weight enforcement program geared to its own requirements, which the FHWA would approve. At the end of each year, each State would submit quantitative information to certify its enforcement of the program.

The NPRM described the "action plan" approach. Under this approach, FHWA would require each State to submit for review and acceptance a truck size and weight enforcement plan for the next year. In addition, the actual certification must be submitted to FHWA by January 1 of each year. It would provide the quantitative information upon which FHWA would base the annual program assessment.

The program would specify, among other things, the number of personnel necessary for size and weight enforcement, the use of fixed and portable scales for weighing trucks, methods for handling excessive loads to bring them within legal limits, and the way to handle repeat offenders. Once the FHWA approved the State's program, it would become the norm by which the agency would evaluate the State's activity for that year to determine whether the State was enforcing vehicle size and weight laws

adequately. The Surface Transportation Assistance Act of 1978 provides for a penalty of 10 percent of the highway funds apportioned to a State if the State fails to enforce size and weight laws adequately.

The comment period on the NPRM closed June 12, 1979. The next step is to prepare a final rule. In view of the language of 23 U.S.C. § 141, which requires the Secretary to assess the adequacy of each State's enforcement effort, we are considering alternatives 2 and 3 (described above), or some combination of them; in preparing the final rule.

#### Summary of Benefits

The primary benefit of this regulation would be to reduce the number of illegally overweight vehicles, thus lengthening the lives of pavements and bridge structures, maintaining the safe condition of the highways, and saving repair and maintenance funds.

#### Summary of Costs

The direct cost to each State for implementing the proposed regulation would vary, depending on its present enforcement program. States with extensive programs to enforce size and weight laws would probably incur only the modest costs of additional reporting requirements. However, States with limited enforcement programs would incur some substantial costs through increases in personnel and equipment.

At this time, FHWA has no direct cost estimates for any State. However, those States that would have to spend the most to upgrade their programs could do so incrementally over several years, rather than incurring a one-time, lump sum expenditure.

#### Sectors Affected

This regulation would affect State governments, operators of cargo carrying trucks, and the general driving public. State governments would be directly affected in two ways. First, they probably would have to expand their truck size and weight enforcement activities at some cost, which would vary by State. Second, they would benefit from the savings in highway maintenance costs that would accrue from reducing the number of overweight vehicles on the highway system.

#### Related Regulations and Actions

*Internal:* The Department recently completed an inventory of systems of penalties for violations of State vehicle weight laws, rules, and regulations, as well as systems in the States for issuing special permits authorizing a vehicle to exceed the applicable weight limitation.

A final report to Congress will be ready by January 1, 1980.

The Department is also conducting a congressionally mandated study covering vehicle sizes and weights and their effect on road construction, reconstruction, and maintenance; the relationship of highway design, construction practices, and maintenance costs in States with weight laws above the Federal maximum; the adequacy of current standards for highway and bridge design regarding present and future transportation needs; and the need for and desirability of uniformity in maximum truck size and weight limits throughout the United States. The Department is to complete and report on this study no later than January 15, 1981.

*External:* GAO Report, "Excessive Truck Weight: An Expensive Burden We Can No Longer Support," July 16, 1979.

#### Active Government Collaboration

None.

#### Timetable

Final Rule—December 1979.

#### Available Documents

ANPRM—43 FR 2643, January 18, 1978, FHWA Docket No. 77-21.

NPRM—44 FR 15638, March 14, 1979, FHWA Docket No. 77-21, Notice 2.

Current size and weight regulations, 23 CFR 658.9.

Draft Regulatory Analysis available from Agency Contact.

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#### DOT—FHWA

**Design standards for highways—geometric design standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways**

#### Legal Authority

Federal-Aid Highway Act of 1976, § 106, 23 U.S.C. § 104(b)(5). Surface Transportation Assistance Act of 1978, § 116, 23 U.S.C. § 119.

#### Statement of Problem

The 1976 and 1978 Highway Acts provided for a Federal-aid program to assist the States in resurfacing, restoration, and rehabilitation (RRR) of streets and highways. Under current procedures, RRR work must meet the standards contained in regulations for

new construction. The intent of this action is to amend existing regulations in order to establish separate RRR procedures to carry out this program. Many highways in need of RRR work have deteriorated and do not meet current traffic demands or the design standards that are currently required by the Federal Highway Administration (FHWA) regulations for new construction for safety features such as banking of curves, roadway and bridge width, and horizontal clearances of obstructions. In light of this, the FHWA is considering a number of alternatives for implementing the RRR program.

#### Alternatives Under Consideration

We explored major alternatives through the publication of an ANPRM on August 25, 1977. The three alternatives we discussed in the ANPRM were: (1) continue FHWA design approval operations within the provisions of the current regulations (23 CFR 625) by granting exceptions to existing design standards on an individual project basis for RRR projects; (2) incorporate, by reference, the American Association of State Highway and Transportation Officials' (AASHTO) "Geometric Design Guide for Resurfacing, Restoration, and Rehabilitation (RRR) of Highways and Streets" as the acceptable criteria for Federal-aid RRR work; and (3) develop, with State officials, individual RRR standards for each State by using the AASHTO "RRR Guide" and other guides. After reviewing the ANPRM comments on all three alternatives, a FHWA task force formulated new recommendations. The task force rejected all three proposals, and the FHWA withdrew the ANPRM.

The FHWA then recommended a new set of geometric design standards for RRR projects, which it published as a NPRM in August 1978. The NPRM elicited more than 100 comments. The FHWA subsequently established an internal working group to review these comments and to identify and evaluate alternatives for implementing the RRR program.

#### Summary of Benefits

The primary benefits of this program would be to prolong the life of the existing highway system and enhance highway safety features. These highways would otherwise continue to deteriorate to the point of structural failure, requiring a much larger expenditure for reconstruction. Other anticipated benefits include reducing costs related to vehicle operation and future highway repair, lowering energy consumption, and increasing the

comfort, convenience, and safety of drivers.

#### Summary of Costs

The FHWA is preparing an analysis of the impact of the major alternatives. A full analysis will be available when we publish the next rulemaking action. Using estimates of the funding levels that Congress might provide, the analysis will discuss the impacts of various levels of design standards.

#### Sectors Affected

This regulation would affect all State and local governments, suppliers, and contractors concerned with highway design, construction, and maintenance.

#### Related Regulations and Actions

*Internal:* FHWA has regulations establishing geometric design standards for highway construction projects (23 CFR 625).

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

Unknown—Evaluation of alternative actions is still under way.

#### Available Documents

ANPRM—42 FR 42876, August 25, 1977, FHWA Docket 77-4.

Withdrawal of ANPRM—43 FR 2734, January 19, 1978.

NPRM—43 FR 37556, August 23, 1978, FHWA Docket 78-10.

Notice regarding status of proposed rulemaking—44 FR 29921, May 23, 1979. Draft Regulatory Analysis of the proposed regulations.

Documents Available from Agency Contact.

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#### DOT-FHWA

#### Interstate Maintenance Guidelines

#### Legal Authority

Surface Transportation Assistance Act of 1978, § 116(d), 23 U.S.C. § 109(m).

#### Statement of Problem

The level of maintenance for some portions of the Interstate Highway System needs to be increased. This is due, in part, to the age of the Interstate System, because older highways require a more concentrated, continuous

maintenance effort than new highways. It is also due, in part, to the fact that some State highway agencies are being forced to defer certain maintenance activities because of reduced highway revenues. The Congress recognized the need for ensuring that the condition of the Interstate system is maintained at the level for which it was originally designed by requiring, in the Surface Transportation Assistance Act (STAA) of 1978, that the Federal Highway Administration (FHWA) establish Interstate Maintenance Guidelines. This requirement, established by § 116(d) of STAA, furthers the State's basic responsibility for Federal-aid highway maintenance as set forth in 23 U.S.C. § 116. The guidelines proposed in this regulation would impose overall procedures. These guidelines would form the basis for requiring States to develop maintenance programs for the Interstate System.

#### Alternatives Under Consideration

We considered two major alternatives: Alternative A would establish guidelines that are generally written descriptions of the completed highway maintenance work on the critical roadway and bridge elements, such as roadway surfaces, shoulders, traffic control devices, etc. Alternative B would establish guidelines that set quantitative and qualitative minimum standards for highway maintenance, particularly those that influence highway safety.

Alternative A would give the States maximum flexibility to develop and implement a program that conforms with the maintenance guidelines. The inherent flexibility of the guidelines would minimize any possible economic and political impact on the States. Those States currently performing marginally satisfactory maintenance would be required to raise their performance level to meet the new minimum guidelines. In actuality, few States would be adversely affected. We anticipate that the minor budget adjustment required to meet the guidelines would not have a significant effect on other groups within the States which are competing for limited budget funds. The regulation would impose little or no additional cost on the States or FHWA for compliance and reporting requirements. Most States' current reporting practices for maintenance activities would satisfy the proposed requirements.

Alternative B requires strict conformity with quantitative measurement standards. Undoubtedly, this alternative would require many States to devote additional resources to their maintenance efforts to ensure

continuous systemwide conformity. This alternative would have a significant economic effect on the State highway agencies, which would need additional funding to finance the higher maintenance level. The cost to the FHWA and the States for reporting and monitoring would increase as much as 25 to 50 percent because of the level of detail Alternative B requires.

We proposed alternative A in the NPRM for the following reasons:

(1) It conforms closely with FHWA's general philosophy, which is to provide maximum flexibility and general guidance and let the States develop their own specific guidelines in light of local conditions.

(2) It would provide FHWA division offices with the tools to ensure that the States adequately maintain the Interstate System.

(3) It is the least burdensome of the alternatives, because it requires less detailed reporting and monitoring for FHWA and the States.

(4) The FHWA has determined that little useful data are available for developing guidelines that are quantitative measurements.

#### Summary of Benefits

Specific data are not available on the benefits that would result from the implementation of the Interstate Maintenance Guidelines. The FHWA believes that the general public would benefit by realizing a savings in vehicle operating and repair costs as a result of a better maintained Interstate System. Moreover, a better maintained Interstate System would be safer.

However, each of these statements is based on the premise that the overall quality of maintenance would improve once the guidelines were issued. But it must be recognized that better maintenance is not a mandated condition of either the legislation or the guidelines. Instead, it is one of the inherent benefits of an improved maintenance management system. We do not anticipate any significant benefits in those States that are currently performing fully satisfactory highway maintenance.

#### Summary of Costs

The anticipated direct and indirect costs for implementing the Interstate Maintenance Guidelines are also difficult to determine. Those States that are currently performing fully satisfactory maintenance would not incur cost increases. However, States that are currently performing marginally satisfactory maintenance would incur additional costs to meet the minimum

guidelines. Estimates of these costs are unavailable at this time.

#### Sectors Affected

The regulation would affect the driving public through savings in vehicle operating and repair costs and through tax increases to fund higher levels of maintenance.

As the Interstate System is completed, both the highway construction industry and the construction equipment industry would be required to modify their operations and equipment to perform additional highway maintenance work.

Geographically, urban areas and the Eastern seaboard would be more significantly affected because of their concentration of Interstate Highways.

#### Related Regulations and Actions

*Internal:* "The Federal-Aid Highway Program Manual" (FHPM) Volume 6, Chapter 4, Section 3, Subsection 1, Maintenance Inspection and Reporting prescribes policies and Procedures for fulfilling FHWA's responsibilities for inspection and reporting on maintenance on completed inspection projects.

"The Federal Highway Administration Maintenance Review Manual," January 1979.

*External:* "The American Association of State Highway and Transportation Officials (AASHTO) Maintenance Manual," 1976.

#### Active Government Collaboration

None.

#### Timetable

Final Rule—January 1980.

#### Available Documents

ANPRM—44 FR 69, January 2, 1979.

NPRM—44 FR 468882, August 9, 1979.

We have prepared a draft regulatory analysis, and it is available as part of FHWA Docket No. 78-43, Notice 2.

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#### Withdrawal of interstate segments and substitution of alternative transportation projects

#### Legal Authority

Federal-Aid Highway Act of 1973, 23 U.S.C. §§ 103 (e)(2) and (e)(4).  
Federal-Aid Highway Act of 1976, 23 U.S.C. §§ 103 (e)(2) and (e)(4).

Surface Transportation Assistance Act of 1978, 23 U.S.C. §§ 103 (e)(2) and (e)(4).

National Mass Transportation Assistance Act of 1974, 49 U.S.C. §§ 1602, 1603, and 1604.

#### Statement of Problem

A number of segments of the Interstate Highway System are involved in serious controversy and/or litigation due to opposition to their construction from environmental groups, community action groups, or others seeking alternative transportation methods. Recognizing that opposition to such projects could preclude their construction and that transportation needs are changing, Congress, in 1973, enacted legislation to permit State and local governments to withdraw the proposed Interstate routes from their transportation programs and receive Federal funds for substitute alternative transportation projects. These projects include mass transit construction, equipment purchases for mass transit, or construction of primary, secondary, urban, or Interstate System roads. The FHWA issued regulations implementing the initial substitution provisions in 1974. The regulation currently under development reflects amendments enacted in the 1976 and 1978 laws, which revise Federal funding shares, limit eligible projects, and impose substitution deadlines, among other provisions. The regulation also provides additional guidance for the States on how to proceed with withdrawal and substitution actions.

#### Alternatives Under Consideration

Under the statutory provisions, there are no alternatives to this approach.

#### Summary of Benefits

The benefits of the substitution program would be to increase transportation choices and to permit the shifting of resources from Interstate construction to other transportation projects.

#### Summary of Costs

As a result of the proposed rule, State and local governments may decide not to build segments of Interstate highways worth billions of dollars and may receive similar amounts of Federal funds for alternative transportation projects. FHWA has made more than \$5 billion in Federal funds available for public mass transit projects or alternate highway projects, since the substitution program was enacted.

**Sectors Affected**

This regulation would affect State highway agencies, transportation planning groups, and transit operators in specific urban areas who choose to take advantage of these provisions.

**Related Regulations and Actions**

*Internal:* Current FHWA regulations require States and local governments to develop transportation plans for urban areas (23 CFR 450). Other FHWA regulations prescribe requirements and standards for the disposition and use of property acquired by States with Federal-aid highway funds in connection with projects that they modify or terminate (23 CFR 480).

*External:* None.

**Active Government Collaboration**

FHWA and the Urban Mass Transportation Administration are preparing the regulations jointly within the Department of Transportation.

**Timetable**

NPRM—December 1979.

Final Rule—June 1980.

**Available Documents**

We issued regulations on June 12, 1974 (39 FR 20663), which provided rules for initial implementation of 23 U.S.C. § 103(e)(4) and 23 CFR 476.

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**CIVIL AERONAUTICS BOARD****Air carrier fitness****Legal Authority**

The Federal Aviation Act of 1958, § 401, 49 U.S.C. § 1371; particularly § 401(r) as amended by the Airline Deregulation Act of 1978, P. L. 95-504, § 22(d), 92 Stat. 1722.

**Statement of Problem**

In amending the Federal Aviation Act with the Airline Deregulation Act of 1978, Congress retained the requirement that air carriers demonstrate that they are fit, willing, and able to conduct air transportation service and comply with the law. The Congress emphasized the importance of this "fitness" requirement by amending the declaration of policy in the Federal Aviation Act to stress the need for reliable and safe air carrier operations, and by adding a new

requirement directing the Civil Aeronautics Board (CAB) to monitor and evaluate on a continuing basis the airlines' fitness for schedules operations.

The general purpose of this public policy is to ensure that airline operations are conducted safely and reliably. In order to comply with the Congressional mandate, the CAB has proposed a comprehensive system of informational requirements for original fitness determinations and ongoing data-filing requirements for continuing fitness. The CAB has also reached an accord with the Federal Aviation Administration (FAA) to integrate the CAB's economic monitoring of the airlines within the FAA's safety jurisdiction, because each agency has expertise that is relevant to the other's statutory mission.

**Alternatives Under Consideration**

The major alternatives are: (1) continuing the current, case-by-case approach to evidentiary standards; and (2) codification of those standards in a regulation. The CAB is inclined towards this second alternative because of the benefits listed below.

**Summary of Benefits**

The rule should help the CAB and the FAA to determine the fitness of air carrier applicants for new operating authority. It should also help the CAB and the FAA to monitor airlines' continuing fitness. While the benefits are difficult to quantify, they are complementary to other FAA and Board requirements that are designed to ensure the highest level of safety and reliability in airline operations.

**Summary of Costs**

The direct costs of compliance with the rule on the part of applicant and incumbent air carriers should be minimal in relation to the revenue involved. The CAB has an ongoing project to weigh the costs and benefits of reports and suggest ways to simplify them. The project will include a review of data received in accordance with this rule. Over time, the results of this project could further reduce the cost of this rule.

In the case of initial licensing, direct costs for an applicant consist of legal counsel, in-house or external consultants, and management time. For a major new applicant such costs could run between \$100,000 and \$500,000, taking into account the cost of the time necessary to pursue the application.

The cost of complying with CAB reporting requirements for monitoring continuing fitness will vary with the

magnitude of the airline's operations. It appears that all of the data that the proposed rule may require to be filed and reported are already collected and compiled by each airline for general business and tax purposes. Accordingly, the additional cost for the airlines of complying with CAB requirements is probably minimal.

The major indirect cost to the national economy of the fitness licensing provision relates to the delay between the filing of an application and the granting of the application by the CAB. For a new air carrier, this delay may vary between 6 and 18 months. The only other substantial direct cost is that incurred by the government in processing applications and monitoring ongoing fitness. No other substantial indirect or direct costs appear likely.

**Sectors Affected**

This rule will affect air carriers, prospective air carriers, travelers, and shippers.

**Related Regulations and Actions**

*Internal:* Fitness determinations, including evidentiary requirements, have historically been made on a case-by-case basis. Requirements for the submission of information are found in 14 CFR 201 and 241.

*External:* Federal Aviation Administration safety regulations: 14 CFR 121, "Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft."

14 CFR 135, "Air Taxi Operators and Commercial Operators of Small Aircraft."

**Active Government Collaboration**

The CAB and the Federal Aviation Administration have reached an accord to integrate their procedures and share their expertise.

**Timetable**

Final Rule—winter 1979-1980.

Final Rule effective—spring 1980.

Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRM's and final rules.

**Available Documents**

NPRM: 44 FR 44106, July 26, 1979 (CAB reference number for this document: EDR-385, Docket 36176).

Closing date for public comment—October 15, 1979.

Reply comment closing date—November 5, 1979.

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**CAB****Air carrier insurance and liability****Legal Authority**

Federal Aviation Act of 1958, § 401(g), 49 U.S.C. § 1371(g), as amended by the Airline Deregulation Act of 1978, P. L. 95-504, § 22(d), 92 Stat. 1722.

**Statement of Problem**

The Civil Aeronautics Board (CAB) staff estimates that the average bodily injury/death claim award for losses suffered by passengers and non-passengers has climbed from \$55,182 in 1967 to a projected \$252,834 in 1979, an increase of 450 percent. The CAB's insurance regulations, which require airlines to obtain insurance from private companies, now only apply to air taxis (operators of small aircraft), charter airlines, and domestic cargo carriers. The minimum limits required for these carriers range from \$75,000 per person to \$500,000 per person. There are no CAB insurance requirements for certificated passenger carriers, such as the large nationwide airlines.

The Airline Deregulation Act of 1978 requires all certificated air carriers to have liability insurance coverage as established by the CAB. Unless a carrier complies with the CAB's insurance rules, it cannot obtain or retain any operating authority. Although there has not been a problem with the ability of existing scheduled carriers to pay claims made against them, Congress concluded that airline deregulation would significantly reduce the barriers to entry into air transportation. This in turn could result in operations by new carriers that are less able to compensate the public for damage losses in an accident.

Changes in the liability protection rules appear to be needed to keep pace with the steadily increasing value of losses the public suffers in aircraft accidents. The restructuring and revision of insurance rules will also meet the mandate of the Congress, in ensuring protection of the public during the transition of air transportation from a heavily regulated to a deregulated market.

**Alternatives Under Consideration**

Possible alternatives the CAB is considering include (1) minimum

standards for insurance policies and self-insurance plans, to prohibit certain types of exclusions of liability or to require certain specific terms, (2) minimum limits of coverage, (3) requiring disclosure of the carrier's insurance limits to passengers and shippers, and (4) no action at all at this time.

Minimum limits of liability and minimum standards for insurance policies would set specific amounts and terms and conditions that the carriers must meet. These standards would be similar to the CAB's current insurance rules. These alternatives have the advantage of ensuring a minimum financial responsibility for all existing carriers, whatever their past records, and for new carriers as the historical barriers to entry are reduced. It would also go further in meeting the intent of the Airline Deregulation Act, which emphasizes that safety in air transportation is to be given primary importance in the transition to deregulation.

For domestic air cargo transportation, the CAB now requires carriers to disclose their insurance and liability limits, but does not require specific amounts for those limits. While the CAB has only used this type of approach in regulation of insurance liability for a short time, it has the advantage of allowing carriers to establish their own liability limits within the boundaries of competition and internal economic management. Its disadvantages are that it depends on a generally knowledgeable consumer, such as a shipper in cargo transportation, and may not be as effective in giving actual notice to vacation travelers and others who might not be regular users of air transportation.

**Summary of Benefits**

Both air passengers and air shippers can be expected to benefit from the insurance requirements being considered in this rulemaking. Both of these classes of users of air transportation would be better able to recover money damages in the event of an accident or damage to property.

**Summary of Costs**

Although the CAB has not previously required certificated route carriers to maintain insurance, most already have coverage in amounts equal to or greater than the limits being considered. All but one of the charter airlines also have such coverage. Some air taxi operators may have to increase their insurance coverage to meet the proposal. The CAB staff estimates that the increased annual cost to the airlines for new passenger

liability coverage may be approximately \$200 per seat, and the increase in cost for public liability coverage (insurance for liability to people other than passengers) may be approximately \$200 to \$4,000 per plane, depending on the size of the plane. These costs would be passed on to passengers and shippers as small increases in prices.

**Sectors Affected**

The rule will affect all types of direct air carriers: certificated route airlines, charter air carriers, air taxis, and all-cargo carriers. It would of course affect the insurance industry in the writing of the policies, and passengers and shippers by the improved protection and slightly higher prices.

**Related Regulations and Actions**

*Internal:* Insurance requirements for special classes of air carriers—

Indirect Cargo Carriers: 14 CFR 296.

Air Taxis: 14 CFR 298.

Domestic Cargo Carriers: 14 CFR 291.

Charter Carriers: 14 CFR 208.

*External:* The CAB staff is researching related actions by other agencies.

**Active Government Collaboration**

CAB staff is holding discussions with the Federal Aviation Administration, whose experience with accident litigation and insurance problems is helpful to the CAB in formulating a proposed rule.

**Timetable**

NPRM—November 1979.

Final Rule—spring 1980.

Final Rule effective—summer 1980.

Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRM's and final rules.

**Available Documents**

None.

**Agency Contact**

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**CAB****Essential Air Service Subsidy Guidelines****Legal Authority**

Federal Aviation Act of 1958, § 419(d), 49 U.S.C. § 1389(d), as amended by the Airline Deregulation Act of 1978, P.O. 95-504, 92 Stat. 1739.

## Statement of Problem

The primary thrust of the Airline Deregulation Act of 1978 is to let the level, quality, and price of air transportation be determined by free competition of airlines seeking to meet consumer demand, instead of by pervasive government regulation. To minimize the potential disruption caused by airlines' increased freedom to reduce or eliminate service in particular markets, the Deregulation Act also established a program to preserve essential air service to small communities, using Federal subsidy when necessary. The Civil Aeronautics Board (CAB) is charged with the responsibility of determining the level of essential air transportation at each eligible point and ensuring that such service is provided. "Eligible points" basically are those to which any certificated airline was authorized to provide service on October 24, 1978 (555 points), plus certain other points that the CAB may designate. "Essential air transportation" is a level of air transportation that the CAB, according to statutory criteria, finds will satisfy the community's needs for air transportation to one or more principal destinations and will ensure the community's access to the nation's air transportation system.

This rulemaking to establish subsidy guidelines responds to section 419(d) of the Federal Aviation Act, as amended, which states:

The Board shall, by rule, establish guidelines to be used by the Board in computing the fair and reasonable amount of compensation required to insure the continuation of essential air transportation to any eligible point. Such guidelines shall include expense elements based upon representative costs of air carriers providing scheduled air transportation of persons, property, and mail, using aircraft of the type determined by the Board to be appropriate for providing essential air transportation to the eligible point.

During FY 1979, the CAB began work on subsidy cases for essential service to 27 points. During FY 1980 and 1981, 12 additional points each year are expected to require subsidy support.

## Alternatives Under Consideration

The Airline Deregulation Act does not point the CAB toward any particular subsidy approach. On the contrary, Congress expects the CAB to develop new and innovative subsidy methods. The primary emphasis is on insuring essential services, rather than on minimizing the costs of the program; i.e., the subsidy program must be structured

so as not to hinder, in any way, the provision of essential services. But of course, the CAB must be prudent with Federal expenditures, so it is faced with the dual and conflicting objectives of keeping subsidy at a reasonable level without interfering with the provision of essential air services.

A step common to achieving both goals is to develop the market for air services. Specifically, increased traffic volumes can at once justify better service (more flights) and reduce subsidy cost. One of the alternatives available to the CAB is cost-plus subsidy, under which airlines are reimbursed for their costs and a profit element based on a predetermined rate of return. This approach does not appear to promote either goal. Instead, the CAB is considering an innovative incentive approach, under which costs above or below those expected would be shared with the government. This approach would allow the air carriers to reap the benefits of developing a market, thus offering them the strongest possible encouragement to do so.

## Summary of Benefits

The benefits from the subsidy program are the avoidance of severe economic dislocation and the continuation of essential air service to communities that would otherwise lose that service as a result of airline deregulation. In some subsidy cases, the combination of deregulation and subsidy will result in more flights and better air service. This may lead to other tangible benefits, such as the attraction of new industry or business, and intangible benefits, such as an improved way of life stemming from better and continued access to the nation's air transportation system.

The subsidy guideline rule, as opposed to the subsidy program itself, should also provide several benefits. It would simplify the procedures for computing subsidy amounts, thus saving administrative time. It could also result in improved services and lower subsidy costs if it uses an incentive approach.

The CAB has not quantified either the extent of service improvements it anticipates or savings in subsidy dollars. The subsidy program and guidelines are not predicated on a cost/benefit analysis by the agency, but are required by law.

## Summary of Costs

The CAB staff's preliminary estimates of the costs to the government of the underlying subsidy program are \$380,000 for FY 1979, \$9.4 million for FY 1980, and \$13.4 million for 1981. The program is still in an early stage, and these

estimates could prove to be understated, particularly if the defined level of "essential air transportation" is raised. A regulation establishing subsidy guidelines, as opposed to the subsidy program itself, is not likely to impose any significant costs.

## Sectors Affected

Subsidies for essential air service will primarily affect these sectors: (1) air travelers and potential air travelers to small communities, (2) the air carrier industry—particularly small, commuter airlines, (3) all taxpayers, and (4) indirectly, the economy of the smaller communities, due to the continued access for business.

Those affected most immediately will be the users of air transportation to and from the affected small communities, which are scattered throughout the country. The subsidies will permit continuation of air services that airlines would otherwise drop. Although the effect on individual taxpayers of the choice of guidelines will be slight in any event, the incentive plan should minimize subsidy compensation and save taxpayers in the aggregate several million dollars annually, when compared with other approaches to subsidy.

## Related Regulations and Actions

*Internal:* The CAB recently adopted the following new regulations: Terminations, Suspensions, and Reductions of Service—14 CFR 323 Procedures for Compensating Air Carriers for Losses—14 CFR 324 Guidelines for Individual Determinations of Essential Air Transportation—14 CFR 398

*External:* The CAB is a party to an inter-agency cooperative agreement, described below.

## Active Government Collaboration

The CAB is a party to an inter-agency cooperative agreement for the purpose of fostering optimum air service to small communities through coordinated financial assistance. The agreement is titled "Small Community Air Transportation Memorandum of Cooperation." Other parties to it are: the Economic Development Administration (Department of Commerce), the Federal Aviation Administration (Department of Transportation), the Farmers Home Administration, and the Small Business Administration (Department of Commerce).

## Timetable

NPRM—winter 1979–1980.

Final Rule—summer 1980.

Final Rule effective—summer 1980.

**Regulatory Analysis**—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRM's and final rules.

#### Available Documents

Final Rule adopting Part 323: 44 FR 20635, April 6, 1979 (PR-200).

Final Rule adopting Part 324: 44 FR 42171, July 19, 1979 (PR-209).

Final Rule adopting Part 398: 44 FR 52646, September 7, 1979 (PS-87).

**Note:** Numbers in parentheses are CAB reference numbers for these documents.

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#### CAB

#### Plain english for airline/passenger contracts

**Note:** This entry is a revision of the item titled "Revision of Airline Passenger Rule Tariffs," which appeared in the February 1979 edition of the Calendar.

#### Legal Authority

Federal Aviation Act of 1958, as amended, §§ 403, 404, and 411, 49 U.S.C. §§ 1373, 1374, and 1381.

#### Statement of Problem

Contracts between airlines and their passengers are extremely complicated documents. Thousands of provisions are written in technical legal language and published in tariffs, which are documents that airlines file with the Civil Aeronautics Board (CAB). The documents contain crucial information about what rights passengers do or do not have should they encounter air travel problems such as mishandled baggage, delayed or canceled flights, oversold flights (bumping), lost tickets, or fare misunderstandings. Unlike the practice with most contracts, air travelers are not given a copy of the tariffs to take home and read at their leisure. They must visit the Tariffs Section at the CAB or an airline ticket office where tariffs are kept open for public inspection. Because it is difficult for lay people to locate and understand important consumer information, most airline passengers do not find out about many important limitations on their rights until after they have a serious problem and register a claim with the airline.

#### Alternatives Under Consideration

Over the past several years, many businesses outside the airline industry have developed "plain English" contracts so their customers clearly understand what they are agreeing to. The CAB is considering issuing an ANPRM to solicit comments on ways that this approach might be applied to airline/passenger contracts.

#### Summary of Benefits

Passengers would have more reasonable expectations of just what is included in their air fares, and would be able to take precautions to avoid many types of air travel problems or minimize the consequences when problems do arise.

#### Summary of Costs

It is too early in the development of this regulation to estimate its costs or other economic impacts, but they are not likely to be substantial. They would include one-time airline costs to develop "plain English" contracts, and printing costs for increased availability to passengers.

#### Sectors Affected

A rule about plain English contracts would affect airlines, travel agents, and the traveling public (over 250 million passengers yearly).

#### Related Regulations and Actions

**Internal:** Exemption of U.S. and Foreign Air Carriers from Tariff Observance Requirements to Permit Resolution of Consumer Complaints, Order 78-12-49, Docket 34189.

Air Carrier Rules Governing Failure to Operate on Schedule or Failure to Carry, Order 79-4-115 and Order 79-9-129, Docket 35361.

Air Carrier Rules Governing the Application of Tariffs, Order 79-2-106, Docket 34772.

**External:** None.

#### Active Government Collaboration

None.

#### Timetable

ANPRM—winter 1979-1980.

NPRM—summer 1980.

Final Rule—winter 1980-1981.

**Regulatory Analysis**—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRM's and final rules.

#### Available Documents

The orders listed under Related Regulations and Actions can be

obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673-5432.

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## FEDERAL COMMUNICATIONS COMMISSION

### Creation of "new" personal radio service (PR Docket 79-140)

#### Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303 and 403.

#### Statement of Problem

For over 30 years, the Federal Communications Commission has recognized the need for, and the value of, personal radio communications. The largest personal radio service is the Citizens Bank (CB) Radio Service, in which the FCC has licensed more than 14 million people. Other personal radio services include the General Mobile Radio Service, which offers the general public very high quality communications, but at considerable equipment costs, and the Radio Control Radio Service, which licenses people to operate model boats, cars, and airplanes by radio control. The CB Radio Service meets many personal and business needs, but there are continuing complaints by CB users about problems of channel congestion and interference.

The FCC is now exploring these issues:

(1) to what extent does the public view the limitations of the three personal radio services as problems; (The limitations include the complaints discussed above, as well as any other problems brought to out attention during the comment period.)

(2) whether creation of a new personal radio service in a different frequency range would solve any problems;

(3) what the demand would be for a new personal radio service;

(4) What features the public would like to see incorporated in a new personal radio service.

#### Alternatives Under Consideration

The FCC is considering whether to establish a new personal radio service in the 900 MegaHertz (MHz) band. The major alternative under consideration is

for the FCC to decline to create a new personal radio service. Secondary alternatives under consideration involve decisions concerning the specific features of a new personal radio service, if the FCC creates one. (For example, the FCC will decide whether equipment to be used in this new service should be designed so that it automatically identifies the station.)

#### Summary of Benefits

Some members of the public have suggested that the benefits of a new personal radio service at 900 MHz would include better quality communications than those available in the CB Radio Service; less potential than the CB Radio Service for causing television interference; and the possibility to incorporate special features (such as channels devoted to special uses) in the new service.

Since the FCC has asked the public to comment on the potential benefits of a new service, the FCC has not yet taken a position on the merits of the suggested benefits.

#### Summary of Costs

The FCC has requested the public to comment on the issue of possible costs. For example, the FCC expressly asked for comments on whether the costs of radios in the new service could be kept within the financial means of most potential users.

Because the issue of costs is open for public comment, the FCC has not taken a position on many of the questions related to potential costs. However, when issuing this Inquiry, the FCC stated that it would expect the initial cost of basic 900 MHz equipment to be in the range of \$300-500. The FCC expects that prices would decrease as demand grows. This contrasts with the range of approximately \$50-500 for CB equipment, depending on whether or not the unit has special features.

#### Sectors Affected

This Inquiry could affect all manufacturers of and dealers in two-way radio equipment, all two-way radio users, and indirectly, all owners of home entertainment equipment (such as stereos, televisions, etc.).

The FCC is interested in knowing whether this Inquiry will affect other sectors.

#### Related Regulations and Actions

The FCC has received a number of petitions for changes in the fundamental purpose of the Personal Radio Services. Two of these (RM-2776 and RM-3071) called for the creation of a "special" radio service between 27.505 and 27.900

MHz, which was, in effect, to be like the current Amateur Radio Service, without the requirement that now exists in the Amateur Radio Service that licensees pass examinations in receiving messages in Morse code. The FCC dismissed the petitions on the basis that a radio service (the Amateur Radio Service) satisfying the described communications requirements (which were almost exclusively Amateur in nature) already existed, and that the creation of a codeless service would be contrary to international agreements. (International agreements require Amateur radio operators using certain radio frequencies to be proficient in the international Morse code.) The FCC also based its denial on the fact that stations in other radio services and the U.S. Government were already using the requested frequency band. Recently, too, the Commission terminated the proceeding in Docket 19759 (the proposal to create a new personal radio service in the 220 MHz Band). The public comments filed in this proceeding were inconclusive. The FCC concluded that a "fresh start" was necessary on the creation of a new Personal Radio Service, and, therefore, that it would start a new rulemaking proceeding to request public comment.

#### Active Government Collaboration

None.

#### Timetable

Public Comment—period open until November 30, 1979.

Reply Comments—on or before December 31, 1979.

#### Available Documents

The Notice of Inquiry (June 7, 1979) is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request PR Docket 79-140.

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#### FCC

Deregulation of competitive domestic telecommunications market (CC Docket 79-252)

#### Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 201, 202, 203, 204, 205, 214, and 403.

The Administrative Procedure Act, 5 U.S.C. § 553.

#### Statement of Problem

As a result of technological and regulatory developments in recent years,

the telecommunications industry has evolved from one dominated by a few large entities to one where there is now some competition for the provision of some communications services. (The telecommunications industry provides telephone, telegraph, and similar "common carrier" services.)

The Federal Communications Commission (FCC) is considering the Problem that the rules it originally adopted to regulate a monopoly telecommunications market may have resulted in unnecessary regulatory burdens on smaller, competitive carriers.

#### Alternatives Under Consideration

In considering whether (and to what extent) the FCC needs to continue to regulate extensively in the common carrier field, the FCC is considering a number of alternatives:

(1) Should the FCC allow smaller ("non-dominant") carriers to file tariffs (prices, terms, and conditions of service) without requiring that they file underlying cost support data? (The current rules require them to do so.)

(2) Should the FCC assume that rates contained in the tariff filings of "non-dominant" carriers are lawful?

(3) Should the FCC relax its rules that now restrict the addition of new circuits or the discontinuation of service by smaller ("non-dominant") carriers?

(4) If the FCC establishes any of the above procedures for non-dominant carriers, how should it determine which carriers are dominant or non-dominant?

The FCC is also considering further deregulatory options, such as not regulating the smaller ("non-dominant") carriers at all. The FCC has not made a specific proposal, but has set forth the issues for public comment.

#### Summary of Benefits

In proposing this deregulation the FCC said that, if adopted, the proposal could save non-dominant carriers the costs of complying with FCC regulation. The proposal could also save the FCC the costs of implementing and enforcing the rules.

The FCC expects public comments on the question of potential benefits of the proposed deregulation. For this reason, the FCC will not make any express findings of benefits unless it decides to proceed with deregulation.

#### Summary of Costs

The FCC expects public comments on the question of potential costs of this proposal. For this reason, the FCC has not made any express findings of the costs of this proposal.

### Sectors Affected

If adopted, this proposal could affect the domestic telecommunications industry and domestic telecommunications users and the internal work priorities of the FCC.

The FCC would like to learn during the public comment period of any other sectors that this Inquiry/Proposal would affect.

### Related Regulations and Actions

The FCC is considering whether the public interest requires that long-distance telephone service be provided on a sole source (monopoly) basis or whether it should be opened to competition. (FCC Docket 78-72, MTS-WATS Market Structure Inquiry.)

### Active Government Collaboration

None.

### Timetable

Public Comment Period—open until January 18, 1980.

Reply Comments—until February 15, 1980.

### Available Documents

The Notice of Inquiry/NPRM of September 27, 1979, is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request FCC Docket 79-252.

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### FCC

Notice of Inquiry/notice of proposed rulemaking in the matter of radio deregulation (BC Docket 79-219)

### Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154(i), 154(j), 303(g), 303(r) and 403.

### Statement of Problem

The Federal Communications Commission (FCC) is reviewing some of its regulations governing commercial radio broadcast stations. In particular, the FCC is reviewing four groups of regulations which may no longer be needed in today's radio market.

In the 1930s and 1940s, when the existing structure of radio regulation was developed, the radio marketplace was very different from what it is today. There were many fewer stations, for example. Also, television was not the dominant medium it is today.

This inquiry/proposal is exploring whether the regulatory assumptions the

FCC made in the 1930s and 1940s are still valid, especially considering the growth in the radio industry and the advent of television. In particular, the inquiry/proposal will focus on whether current radio regulations are the most effective and least costly way to achieve such goals as:

- (1) adequate informational (non-entertainment) programming,
- (2) reasonable limits on the number of commercial minutes each hour,
- (3) consideration by the radio broadcaster of community needs and interests, and
- (4) retention by the broadcaster of adequate records of nonentertainment programming and commercial time ("program logs").

Current FCC regulations accomplish these goals in a variety of ways. In the area of nonentertainment programming, FCC rules specify that the amount of nonentertainment programming must be at least a minimum percentage of a station's total programming. For AM stations, FCC rules specify that nonentertainment programming should be at least 8 percent of total programming. For FM stations, FCC rules specify 6 percent of total programming. If a radio station is applying for renewal of its license and proposes to program less than 8 percent (or 6 percent, as appropriate) nonentertainment programming, the FCC's Broadcast Bureau staff cannot routinely grant the renewal. The renewal application must be considered by the full Commission.

In the area of commercial limits, FCC rules now set commercial limits (18-20 minutes per hour, plus additional time during political campaigns) that, if a radio station renewal applicant exceeds them, can prevent routine granting of an application by the Broadcast Bureau under its delegated authority.

FCC policies also now require a radio broadcaster to consider the community's needs and interests when planning the station's programming. The FCC adopted a detailed primer setting out procedures for determining the composition of the area to be served, consulting with community leaders and members of the general public, enumerating community problems and needs, evaluating the problems and needs, and relating proposed programming to the evaluated problems and needs. The FCC has denied applications based on the failure of the applicant to ascertain these things in accordance with the requirements of the primer. The FCC calls this procedure "ascertainment."

In the area of program logs, current FCC rules require a broadcaster to keep detailed records of his programming and

commercial time. The program log rules require numerous entries, such as the source of each program, the time each program begins and ends, the sponsor(s) of the program, and the public service announcements that the station broadcasts. A radio station licensee must make these logs available to the public on request.

In the notice proposing radio deregulation, the FCC said, "We have long been, and remain, committed to the principle that radio must serve the needs of the public. We have never, however, believed that radio is a static medium that requires the retention of every rule and policy once adopted. A regulation that was reasonable when adopted, and appropriate to meet a given problem, may be most inappropriate if retained once the problem ceases to exist. In our view, it is vital that our rules and policies be appropriate for the industry and marketplace we regulate, reducing regulation to the maximum extent consistent with the public interest, convenience and necessity. We note in passing that Congress is now examining whether legislative reform is necessary to foster optimum development of all communications industries, including broadcasting. Additionally, the President has ordered Executive agencies to adopt procedures to improve existing and future regulations, including the deletion of unneeded ones."

### Alternatives Under Consideration

(1) The FCC said there were a number of alternative approaches by which it could modify or eliminate current nonentertainment rules and policies:

(a) The FCC could remove itself from all consideration of the amounts of nonentertainment programming that commercial radio licensees furnish, leaving it to the marketplace to determine what levels of such programming broadcasters would present.

(b) The FCC could relieve individual licensees of any obligation to provide nonentertainment programming but could, instead, analyze the amounts of such programming on a marketwide basis, and if the amount of such programming in a particular market fell below a certain level, the FCC then could take action to redress the matter.

(c) The FCC could free licensees of any specific responsibilities with respect to nonentertainment programming (as well as ascertainment and commercial limits) but would require licensees to show, if their renewals were challenged, that they were serving the public interest (FCC would use marketwide criteria for such evaluation).

(d) The FCC could impose quantitative programming standards for each nonentertainment programming category, such as a minimum number of hours per week for each category of programming or a specified percentage of time to be devoted to each category.

(e) The FCC could impose quantitative standards, but measure the adequacy of programming on the basis of each station's expenditures. (The FCC could mandate a proportion of revenues or profits that a station must reinvest in nonentertainment programming.)

(f) The FCC could establish a minimum fixed percentage of local public service programming that licensees would have to present—including local news, public affairs and public service announcements, community bulletin boards, or any other locally-produced nonentertainment programming that served local needs.

(2) Changes in the commercial limit rules that the FCC is now considering include:

(a) Eliminating all rules and policies dealing with the amount of commercial time and allowing the marketplace to determine tolerable levels of commercialization;

(b) Setting quantitative standards which, if ignored, would result in the FCC imposing some sanction against the licensee;

(c) Eliminating all rules specific to individual licensees but interceding if heavy levels of commercialization occurred marketwide; or

(d) Retaining quantitative guidelines but only with regard to the Broadcast Bureau's delegation of authority.

(3) The Commission said there were four options warranting consideration in the area of ascertainment of community problems and needs:

(a) The FCC could eliminate all Federally mandated ascertainment requirements and leave it to marketplace forces to ensure that stations provided programming to meet the needs and problems of each station's listenership;

(b) The FCC could require that licensees conduct ascertainment but permit them to decide in good faith how best to conduct that ascertainment without the current detail of formalized FCC requirements;

(c) The FCC could retain the ascertainment requirement, but in a simplified form; or

(d) The FCC could retain existing ascertainment requirements.

(4) The FCC's requirements for program logging are intended, in part, to assure documentation of nonentertainment programming and commercial practices. If

nonentertainment programming and commercial requirements were removed as a result of this proceeding, the FCC would consider eliminating or modifying program log requirements. But members of the public challenging a station's programming failure might need these records to substantiate such claims. Therefore, the FCC is considering the following three options:

(a) The FCC could eliminate the need for AM and commercial FM stations to keep program logs;

(b) The FCC could eliminate its program log requirements, but require any licensee keeping records of its programming or commercial schedules for its own purposes to make these available to the public in accordance with procedures outlined in the Commission's rules;

(c) The FCC could continue current program logging and disclosure requirements.

#### Summary of Benefits

The FCC said in the inquiry/proposal that it had seen evidence that market forces will, in most instances, yield programming that serves consumer well-being. If it adopts deregulation, the FCC anticipates that radio programming would reflect listeners' tastes, rather than regulatory decisions.

The FCC has asked for public comments on the issue of potential benefits of this proposal. Therefore, the FCC will not make any express findings of benefits from this inquiry/proposal unless it decides to proceed with deregulation.

#### Summary of Costs

Some members of the public have suggested that the deregulation inquiry/proposal will not result in broadcasting which serves the public interest.

The FCC has asked for public comment on potential costs of the inquiry/proposal. For this reason, the FCC has not made any express findings of costs.

#### Sectors Affected

This inquiry/proposal could affect radio broadcasters, radio listeners, and advertisers. If adopted, this inquiry/proposal could also affect the internal work priorities of the FCC.

The FCC is interested in learning during the comment period if this proceeding will affect any other sectors.

#### Related Regulations and Actions

The FCC is continuing a long-standing broadcast deregulation project. The purpose of this project is to review the continued usefulness of each radio and television broadcast regulation. The

FCC will closely coordinate the work of this project with the radio deregulation inquiry/proposal.

#### Active Government Collaboration

, None.

#### Timetable

Public Comment period—open until January 25, 1980.

Reply Comments—until April 25, 1980.

#### Available Documents

The Notice of Inquiry/NPRM issued September 6, 1979, is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request BC Docket 79-219.

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## FEDERAL MARITIME COMMISSION

Amendment to financial reports by common carriers by water in the domestic offshore trades

#### Legal Authority

Shipping Act of 1916, 46 U.S.C. §§ 817, 820 and 841(a). Intercoastal Shipping Act of 1933, 46 U.S.C. §§ 843, 844, 845, 845(a) and 847.

Amendment to the Intercoastal Shipping Act of 1933, P.L. 95-475.

#### Statement of Problem

P.L. 95-475, an amendment to the Intercoastal Shipping Act of 1933, has altered the Federal Maritime Commission's authority to regulate rates in the domestic offshore trades.

"Domestic offshore trade" means that trade carried on by common carriers by water operating: (1) between the United States and its territories, possessions, and Puerto Rico; (2) between or within those territories, possessions, and Puerto Rico; (3) between the continental United States and Hawaii and Alaska; and (4) between, but not within Hawaii and Alaska. In order to properly implement P.L. 95-475, the law directs the Commission to prescribe by regulation the guidelines for determining the justness and reasonableness of rates of return or profits for common carriers by water in the domestic offshore trades. Presently, the Commission's General Order 11, "Financial Reports by Common Carriers by Water in the Domestic Offshore Trades," is only a reporting requirement and must be modified in order to serve as a substantive guideline for the

determination of just and reasonable rates of return or profits.

#### Alternatives Under Consideration

There are no realistic alternatives to issuing the guidelines, since the above-cited legal authority explicitly mandates them. The range of alternatives the Commission considered for the guidelines includes different criteria based on type of carrier, different reporting requirements based on size of carrier, cost justification by type of cargo, cost justification by specific commodity, and cost analysis with respect to general overall rate levels.

#### Summary of Benefits

Publication of the guidelines will enable the Commission to expedite its decisions in domestic offshore rate cases and should serve to limit the number of rate increases that carriers seek. Also, the guidelines should enable carriers to publish increases that are consistent with what the Commission and the shipping community will accept.

#### Summary of Costs

Although no quantitative estimates of the relative costs are available, we do not expect that there will be any substantial effect on rates. Shippers, the users of ocean transportation, are the Commission's real consumers; therefore, it is extremely difficult, if not impossible, to determine the cost of the proposed rules to the lay consumer.

#### Sectors Affected

The proposed rules will affect common carriers by water and shippers involved in the domestic offshore commerce of the Continental United States and its noncontiguous areas (Alaska, Virgin Islands, Puerto Rico, American Samoa, Hawaii, Guam, Northern Marianas, Johnston Island, Midway Island and Wake Island).

#### Related Regulations and Actions

##### Internal:

Commission's Rules of Practice and Procedure.

Commission General Order 38 (Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce).

The Commission also will revise its Rules of Practice and Procedure to incorporate the changes necessary to meet the requirements the P.L. 95-475 imposes.

##### External: None.

#### Active Government Collaboration

None.

#### Timetable

Staff recommendation to the Commission—December 1979.

Final Rules—winter 1979-1980.

This rulemaking does not require regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

#### Available Documents

Federal Maritime Commission Docket 78-46.

ANPRM—43 FR 53046-53047, Nov. 15, 1978.

NPRM—44 FR 26944-26955, May 8, 1979.

Transcript of informal public hearing regarding P.L. 95-475. Available from the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

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#### FMC

#### Amendments to tariff requirements for controlled carriers

##### Legal Authority

The Administrative Procedure Act, § 4, 5 U.S.C. 553.

The Shipping Act of 1916, §§ 18(b), 18(c), 21, and 43, 46 U.S.C. §§ 817(b), 817(c), 820 and 841(a).

Ocean Shipping Act of 1978, P.L. 95-483.

##### Statement of Problem

Section 18(c) of the Shipping Act of 1916, as amended by the Ocean Shipping Act of 1978, provides for the regulation of the rates or charges of certain State-owned or controlled carriers in the foreign commerce of the United States. The term "controlled carrier" means a common carrier by water in the foreign commerce of the United States whose operating assets are directly or indirectly owned or controlled by the Government under whose registry the vessel operates. Controlled carriers, operating as "cross-traders" (carriers that operate in a specific trade and do not fly the flag of the exporting or importing nations in that trade) in the U.S. oceanborne foreign commerce and backed by the resources of their governments have penetrated the United States liner trade by actively and systematically pursuing a practice of rate-cutting (maintaining rates in their tariffs that are below a level which is just and reasonable) to

attract more cargo for their ships. Such rate-cutting threatens to disrupt the international trade of the United States and to jeopardize the economic viability of the U.S. as well as other privately-owned carriers. The Ocean Shipping Act of 1978 (P.L. 95-483) strengthens the provisions of the Shipping Act of 1916 and thus the powers of the Federal Maritime Commission to regulate the rate-cutting practices of State-controlled carriers. The provisions of § 18(c) of the Shipping Act of 1916, as amended by the Ocean Shipping Act of 1978, became effective November 17, 1978, imposing upon the Federal Maritime Commission the responsibility to regulate the rates and practices of certain State-owned or controlled carriers operating in the oceanborne foreign commerce of the United States.

The Federal Maritime Commission proposes to amend 46 CFR 536 to implement the requirements of P.L. 95-483. The proposed amendments prescribe the technical requirements for the publication, filing, justification and suspension of controlled carrier tariff rates, changes, classifications and rules. They also require that all common carriers annually file with the Federal Maritime Commission an information circular which answers specific questions related to the carriers' ownership, vessels, subsidies, service, flag, reorganizations, annual reports, form of organization, forwarding activities, consolidation activities, and number of containers owned or leased.

This requirement, under authority of § 21 of the Shipping Act of 1916, is added to 46 CFR 536 so that the Commission may be apprised of any controlled carriers serving in U.S. trades, and the controlled carriers may be given an opportunity to submit information which may warrant an exemption from controlled carrier requirements.

#### Alternatives Under Consideration

There are no realistic alternatives, because the proposed rules are necessary to implement the requirements of P.L. 95-483.

#### Summary of Benefits

The proposed amendments provide the specific tariff filing requirements for publication, filing, justification, and suspension of controlled carrier tariff matter. It is necessary to provide a systematic method to adopt the standards set forth in P.L. 95-483, which was designed to prevent controlled carrier penetration and disruption of U.S. trades through rates and practices which are unjust and unreasonable.

A requirement that all common carriers file an information circular with the Federal Maritime Commission is needed for the Commission to properly classify common carriers as controlled carriers and allow the Commission to monitor controlled carriers entering or leaving trades in the U.S. foreign commerce.

#### Summary of Costs

No information is available at this time; however, the carriers filing the information circular will incur some direct costs. Shippers, the users of ocean transportation, are the Commission's real consumers; therefore, it is extremely difficult, if not impossible, to determine the cost of the proposed rules to the lay consumer.

#### Sectors Affected

The proposed amendments will affect all common carriers in the foreign commerce of the United States. The rule will require controlled carriers to publish just and reasonable rates, charges, classifications, and rules as prescribed by P.L. 95-483.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

The Department of State and the Commission, before the rulemaking, coordinated an effort to initially identify State-controlled carriers.

#### Timetable

NPRM—fall 1979.

This rule does not require a regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

#### Available Documents

None.

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#### FMC

Certification of company policies and efforts to combat rebating in the foreign commerce of the United States

#### Legal Authority

The Administrative Procedure Act, § 4, 5 U.S.C. § 553.  
The Shipping Act of 1916, §§ 21 and 43, 46 U.S.C. § 842.  
The Shipping Act Amendments of 1979, P.L. 96-25.

#### Statement of Problem

The Shipping Act Amendments of 1979, P.L. 96-25, effective June 19, 1979, amend the Shipping Act of 1916 to strengthen the provisions prohibiting rebating in the United States foreign trades. Rebating is the illegal return by a carrier to a shipper (exporter) of part of the payment for transportation provided. Common carriers by water in the foreign commerce of the United States are prohibited by the Shipping Act of 1916 from charging rates lower than those in their published tariffs (publications containing the actual rates, charges, classifications, rules, regulations, and practices for transportation by water), which they must keep open to the public and file with the Federal Maritime Commission. A considerable surplus of cargo-carrying capacity over the supply of cargo available in the U.S. ocean liner trades has resulted in many carriers offering illegal rebates, secret inducements and incentives to attract cargo. Illegal rebating threatens the stability of the ocean commerce of the United States and the viability of the U.S. merchant marine. An unfair competitive advantage is gained by those carriers and shippers who are involved in illegal rebating. Prior to the enactment of the Shipping Act Amendments of 1979 (P.L. 96-25), existing laws were not effective in correcting the situation and were applied in a discriminatory manner against U.S. carriers. The Amendments permit the Federal Maritime Commission (FMC) to carry out its regulatory function to deter rebates in a prompt and equitable manner. For the first time, foreign-flag ocean carriers are required to comply with FMC subpoenas or face exclusion from U.S. ocean trades. Section 4 of P.L. 96-25 amends § 21 of the Shipping Act of 1916 by adding a new subsection (b) mandating the Federal Maritime Commission to require the Chief Executive Officer of every vessel operating common carrier by water in the foreign commerce of the United States to file a periodic written certification, under oath, attesting to company policies and efforts to combat rebating and to other information necessary for the Commission to carry out the provisions of P.L. 96-25. The Federal Maritime Commission has discretionary authority to require similar certification from any shipper, consignee, consignee, forwarder, broker, other carrier or other person subject to the Shipping Act of 1916.

The Federal Maritime Commission staff is considering recommending a new Part 552 ("Certification of Company Policies and Efforts To Combat Rebating

in the Foreign Commerce of the United States") to 46 CFR to implement the requirements of P.L. 96-25. The proposed amendments will prescribe the technical requirements for the filing of certification of company policy to combat rebating, the filing of tariff notification of individual company policies prohibiting payment of rebates, and the annual reporting requirements.

#### Alternatives Under Consideration

There are no realistic alternatives, because the proposed rules are necessary to implement the requirements of P.L. 96-25.

#### Summary of Benefits

The proposed rules provide the specific requirements for the filing of certification of company anti-rebating policies and tariff notification of them. The elimination of the anti-competitive practice of rebating by all carriers in our ocean commerce will strengthen the ability of the American merchant marine to compete in our own trades, increase rate stability, and eliminate price discrimination. P.L. 96-25 increases penalties from \$5,000 to \$25,000 per violation and gives the Federal Maritime Commission authority to suspend the tariffs of carriers who refuse to comply with its orders in rebating investigations, subject to Presidential veto.

#### Summary of Costs

Specific information is not available at this time; however, the carriers that will be required to prepare and file reports under the proposed rules will incur some direct costs. Shippers, the users of ocean transportation, are the Commission's real consumers; therefore, it is extremely difficult—if not impossible—to determine the cost of the proposed rules to the lay consumer.

#### Sectors Affected

The proposed rules will affect all vessel-operating common carriers by water in the foreign commerce of the United States. The Commission also has discretionary authority to require similar certification from any shipper, consignee, consignee, forwarder, broker, other carrier or other person subject to the Shipping Act of 1916.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

None.

#### Timetable

Staff Recommendation to the Commission—winter 1979-1980.

**Final Rules—spring 1980.**

This rule does not require a regulatory analysis under Executive Order 12044 since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

**Available Documents**

Federal Maritime Commission Docket 79-65.

NPRM—44 FR 39232-39233, July 5, 1979.

Available for review in the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

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**FMC**

**Filing of agreements by common carriers and other persons subject to the Shipping Act of 1916**

**Legal Authority**

Shipping Act of 1916, §§ 15, 21, 22 and 43, 46 U.S.C. §§ 814, 820, 821 and 841(a).  
Administrative Procedure Act, § 4, 5 U.S.C. § 553.

**Statement of Problem**

Section 15 of the Shipping Act of 1916 requires that every common carrier by water or other persons subject to the Act file with the Commission a copy of every agreement with another carrier or other person subject to the Act. Upon Federal Maritime Commission (FMC) approval of an agreement, the agreed upon activity (rates, charges and other matters affecting competition) enjoys immunity from the application of the antitrust statutes to the extent covered by the approved agreement. Review of agreements has progressed from a process of primarily noting the presence or absence of certain legally defined conditions, including evaluation of the economic context in which such agreements would operate, to now applying in all substantially anticompetitive agreements what has become known as the "Svenska" test from "FMC, et al. v. Aktiebolaget Svenska Amerika Linien, et al.," 390 US 238, 240 (1968). The "Svenska" test requires that the agreement so tested must confer an important public benefit, meet a serious transportation need, or fulfill a valid regulatory purpose. A more recent test is the Europacific case (U.S. Court of Appeals for the District of Columbia, *United States Lines, Inc. v. FMC, et al.*, 76-2004 and 77-1470). This case elaborated on the criteria that the

Commission is expected to follow in the processing of agreements, including antitrust implications, hearing standards, availability of information to the public, and the minimizing of informal contacts with the contending parties.

These more stringent standards have required that the proponents of any proposed agreement furnish substantially more data than they had to in the past in justification of their proposal. Parties filing agreements for approval have tended to resist these requirements for a number of reasons, including the following: (1) filing parties have historically not been required to furnish such information, (2) those filing are uncertain of what is required, (3) some continue to believe that such requirements exceed the Commission's authority, (4) gathering of data is considered to be time-consuming and burdensome, and (5) some carriers based in foreign countries have been restrained by their governments from complying.

The above have led to difficulties in the processing of agreements, and the Commission and its staff have seen the need for development of a method to deal with filings more quickly.

Docket No. 76-63, which is pending before the Commission, would replace the current nonspecific guidelines to file agreements under the Commission's General Order 24 with specific filing requirements and would describe the supporting statement and materials which must accompany the filing. Failure to meet those requirements would result in the agreement being returned without being processed. In conjunction with this new General Order, the FMC has also drafted a Commission Order which establishes proposed guidelines for the internal processing of filed agreements.

**Alternatives Under Consideration**

The staff is presently making efforts to improve the handling of the above problems on a case-by-case basis. To continue to do so is a possible alternative. This is an ultimately unsatisfactory solution, however, because of the inevitable lapses caused by personnel changes, varying workloads, differing interpretations, and the difficulty of enforcing an implicit standard. Another possible solution would be to pass legislation reaffirming the Commission's jurisdiction and setting forth more detailed criteria for approvability. If such legislation were enacted, there would remain a need for procedural guidelines and provisions for public access to information on pending and approved agreements. In addition,

such a change still would not eliminate all consideration of economic factors from the review of filed agreements. The FMC and its staff consider neither of the above alternatives to the present proposal to be satisfactory.

**Summary of Benefits**

The proposed rules will:

- (1) impose definite responsibilities on the filing parties and the Commission staff,
- (2) provide a method for disposition of incomplete filings without drawn-out formal proceedings,
- (3) establish more uniform and consistent treatment of filings,
- (4) expedite the processing of agreements,
- (5) minimize the risk of the compromise of a subsequent proceeding by prohibiting improper contacts between the FMC staff and the various parties to that proceeding, and
- (6) provide a regular and consistent manner for the public to gain access to information concerning a proposed action.

The major tangible savings to be realized are through the elimination of delays in dealing with defective filings. The proposed rules should result in substantial savings to the Commission and staff. To the extent that the rules prevent the compromise of any formal proceeding or allow a formal proceeding to be dispensed with, additional substantial savings will be realized. Also, to the extent that timely consideration of an action or proposed action affects the business fortunes of interested parties, timely treatment will result in savings.

**Summary of Costs**

No quantitative estimates of the relative costs are available. Filing parties would incur the additional expense of gathering and presenting acceptable economic data. In most cases, the filing parties should already possess such information in a form equivalent to that which would be required. In addition, proponents who might initially fail to comply with the filing requirements would incur the added expense of refiling. The necessity to maintain a public file and the need for positive process control would result in some additional initial cost to the Commission.

**Sectors Affected**

The proposed rules will directly affect all common carriers by water in the foreign commerce of the United States, independent ocean freight forwarders, and terminal operators who are party to an agreement which is required to be

filed with the Federal Maritime Commission.

#### Related Regulations and Actions

*Internal:* Commission General Order 24, Filing Agreements Between Common Carriers of Freight by Water in the Foreign Commerce of the United States, as revised (46 CFR 522.1-7).

The Commission has prepared a proposed Commission Order establishing guidelines for the internal processing of filed agreements.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

Staff Recommendation to the Commission—winter 1979-1980.

Final Rules—spring 1980.

This rule does not require a regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

#### Available Documents

Federal Maritime Commission Docket 76-63.

NPRM—41 FR 51622, November 23, 1976.

NPRM—44 FR 36077-36080, June 20, 1979.

Available for review in the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

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#### FMC

Revision of the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders"

#### Legal Authority

Shipping Act of 1916, §§ 21, 43 and 44, 46 U.S.C. §§ 820, 841(a) and 841(b).

Administrative Procedure Act, § 4, 5 U.S.C. § 553.

#### Statement of Problem

There is a need to revise and modify the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders." An independent ocean freight forwarder is an individual, corporation, partnership, association, or other legal entity that for a fee dispatches shipments on behalf of others by oceangoing common carriers and handles the formalities incident to such shipments. Services rendered by this industry include the dispatching of

export cargo on behalf of shippers; examining instructions and documents received from shippers; preparing and/or processing export declarations; booking or confirming cargo space; preparing and/or processing delivery orders and dock receipts; arranging for and/or furnishing trucks and lighters (boats used in unloading or loading vessels not lying at wharves, or in transporting freight about a harbor); preparing instructions to truckmen and lightermen; preparing and/or processing ocean bills of lading; preparing and/or processing government international commercial documents and arranging for their certification; arranging for and/or furnishing warehouse storage; arranging for insurance; clearing shipments in accordance with United States Government export regulations; preparing and/or sending advice notifications of shipments and other documents to banks, shippers, or consignees, as required; advancing necessary funds in connection with the foregoing; coordinating the movement of shipments from origin to vessel; rendering special services in connection with unusual shipments or difficulties in transit; and giving expert advice to exporters concerning letters of credit, licenses and inspections.

General Order 4 sets forth regulations providing for the licensing as independent ocean freight forwarders of those who desire to carry on the business of forwarding, the procedure for applying for licenses, the qualifications required of applicants, and the grounds for revocation or suspension of licenses. The General Order also contains rules pertaining to the practices of licensed independent ocean freight forwarders, ocean freight brokers (persons engaged by a carrier to sell or offer transportation for sale, and who hold themselves out by solicitation or advertisement as one who negotiates between shipper and carrier for the purchase, sale, conditions, and terms of transportation), and oceangoing common carriers pursuant to P.L. 87-254. The Federal Maritime Commission (FMC) staff feels that since the General Order was originally issued in December 1961, many of the rules published in that Order have become outdated and impractical, creating confusion and consequent inefficiency in their application. In addition, the General Order contains references to "grandfather" provisions which have long ceased to be valid.

#### Alternatives Under Consideration

To maintain the existing General Order 4 is an alternative; however, to do so would be unresponsive to the

problems that have arisen under the regulations encompassed in the Order.

#### Summary of Benefits

By revising General Order 4, the Commission would clarify many of the current rules pertaining to the licensing and practices of independent ocean freight forwarders. These rules are necessary for the Commission to properly carry out its statutory responsibilities with respect to the licensing and practices of independent ocean freight forwarders.

#### Summary of Costs

No detailed cost information is available at this time.

#### Sectors Affected

The changes under consideration provide for rules and regulations affecting the activities of independent ocean freight forwarders engaged in forwarding cargo in the export commerce of the United States.

#### Related Regulations and Actions

None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—winter 1979-1980.

This rule does not require a regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

#### Available Documents

None.

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#### FMC

Surcharges under dual-rate contracts on less than ninety days' notice

#### Legal Authority

Shipping Act of 1916, §§ 14b, 18(b)(4) and 43, 46 U.S.C. §§ 813(a), 817 and 841(a).

Dual-Rate Contract System in the Foreign Commerce of the United States, 46 CFR 538.10.

#### Statement of Problem

Section 14b of the Shipping Act of 1916 authorizes the Commission to permit the use of dual-rate contracts. Dual-rate contracts are used by common carriers and conferences of carriers (an association of carriers permitted,

pursuant to an agreement approved by the Commission under § 15 of the Shipping Act of 1916, to discuss, establish and file rates and practices on behalf of its member lines) to offer lower rates to shippers who agree to give all or a fixed portion of their shipments to the carrier or conference. These dual-rate contracts must be approved by the Commission and must be available to all shippers (exporters) under equal terms and conditions. As far as rates are concerned, the Act requires that the contract rate shall not be more than 15 percent lower than the published noncontract rate.

The provision required by clause (2) of § 14b of the Shipping Act of 1916 is that:

... whenever a tariff rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in no case less than ninety days.

As the words, "insofar as it is under the control of the carrier" suggest, the imposition of rate increases on less than ninety days' notice may be permissible in some circumstances. In the Dual-Rate Cases, 8 F.M.C. 16 (1964), the Commission prescribed the clauses that it would require carriers to use in their dual-rate contracts if they wished to provide for rate increases on less than ninety days' notice. These clauses subsequently were adopted as Articles 14(a) through 14(c) of the Uniform Merchant's Contract that the Commission promulgated in Part 538 of its rules (46 CFR 538.10).

It is the Commission's perception that Article 14 of the Uniform Merchant's Contract, in its current form, may not be sufficiently responsive to the situation facing many carriers confronted with severe, sudden, and unforeseen cost increases. The recent surge in fuel costs is a prime example of this situation. Rapidly rising fuel costs have created critical financial problems for the ocean transportation industry, imposing serious cash flow problems for many ocean carriers. Many trade routes are marginally profitable and the carriers servicing them could be forced to abandon service on these routes if they cannot immediately pass on these fuel costs to shippers.

The Commission has proposed to enact rules to amend and clarify Article 14 of the Uniform Merchant's Contract contained in Subpart B of Part 538 of the Commission's Rules (46 CFR 538.10). The proposed rules would amend Article 14(c) to allow for the direct pass-through to shippers of sudden, severe and unforeseen cost increases on a minimum notice of 15 days.

#### Alternatives Under Consideration

Maintenance of existing rule 46 CFR 538.10 is an alternative. The existing rule, Article 14(c) of the Uniform Merchant's Contract, allows for a rate increase on 30 days' notice for "extraordinary conditions . . . which . . . may unduly impede, obstruct, or delay the obligation of the carrier . . ." It is possible, under the existing rule, to justify an increase which is based upon rising fuel costs on 30 days' notice. However, the Commission feels the 15 days proposal may be more responsive to carriers confronted with severe, sudden and unforeseen cost increases.

#### Summary of Benefits

We expect the proposed rule to contribute to the maintenance of service to existing ocean trade routes by enabling carriers who are operating on a narrow margin of profit to maintain financial integrity.

#### Summary of Costs

The FMC predicts that this rule would cause no appreciable costs to the Government or to carriers. Shippers will pay higher prices in cases where carriers pass through emergency costs to them. The required notice period would be cut in half so that the increases would be more immediate. Shippers, the users of ocean transportation, are the Commission's real consumers. Therefore, it is extremely difficult, if not impossible, to determine the pass-through costs of the proposed rules to the lay consumer.

#### Sectors Affected

The proposed rule would affect ocean carriers and shippers in the foreign commerce of the United States. Carriers would be allowed to pass along to shippers sudden, severe and unforeseen cost increases with the minimum required notice of such increases reduced to fifteen days.

#### Related Regulations and Actions

*Internal:* The Commission also has proposed a new section 536.18 to its tariff filing rules (46 CFR-Part 536) which would specify the time and manner in which carriers seeking to invoke Article 14 of the Uniform Merchant's Contract must justify such action to the Commission.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

Final Rule—February 1980.

This rule does not require a regulatory analysis under Executive Order 12044,

since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

#### Available Documents

Federal Maritime Commission Docket 79-58.

NPRM—44 FR 32408-32418, June 6, 1979.

Available for review in the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

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## INTERSTATE COMMERCE COMMISSION

### Improvement of TOFC/COFC regulation (Ex Parte No. 230 (Sub-5))

#### Legal Authority

Interstate Commerce Act, 49 U.S.C. § 10321.

#### Statement of Problem

The Federal Railroad Administration, the General Accounting Office, and the Interstate Commerce Commission have undertaken recent studies of efforts by the various transportation modes (such as rail-motor, motor-water, or any other combination of modes), to provide a continuous movement of freight between two points in combined service. These studies show that numerous factors have discouraged the development of intermodal traffic movement plans.

The principal factors that discourage intermodal traffic are the substantial changes in established operations which would be required to implement the plans, negotiations with collective bargaining representatives to modify established work rules (where employees are members of a labor union), and significant and often substantial cash outlays to install special material-handling equipment.

The major intermodal traffic movement concepts that the Commission presently administers are the Trailer-on-Flatcar (TOFC) and Container-on-Flatcar (COFC) plans. Generally, these plans implement the transportation of a truck, trailer, semi-trailer, or detachable container on a rail car.

The purpose of this proceeding is to determine what the Commission can do to increase the use of TOFC/COFC services. The proceeding is limited to

rail-motor intermodal movements; it does not embrace intermodal movements with a prior or subsequent movement by water.

There are five basic intermodal plans presently in use. Under Plan I, a motor carrier (truck operator) may substitute rail for motor service between points which the motor carrier is authorized to serve. Under Plan II, a railroad may provide complete door-to-door service; under Plan III the portion of the service that the railroad performs is limited to rail transportation between established TOFC ramps (the shipper must provide the trailers); Plan IV is comparable to Plan III, except that the shipper must also furnish the rail car. Plan V involves coordinated continuous motor-rail or motor-rail-motor services at joint rates which may be originated by either mode on the originator's shipment request (bill of lading). This latter plan facilitates coordination of rail and motor operations where the carriers serve different territories.

The Commission's TOFC/COFC traffic data indicate that more than 50 percent of all current TOFC/COFC traffic moves under Plan II (all-rail plan); 15 percent moves under Plans III and IV, and the remaining traffic moves under Plans I and V. To date, motor carrier participation in these intermodal traffic movement plans has been very limited.

#### Alternatives Under Consideration

There are several major alternatives under consideration. The first alternative is to exempt the rail and truck portions of TOFC/COFC service pricing from our regulation under § 10505 of the Interstate Commerce Act on the grounds that the limited scope of such plans makes economic regulation unnecessary (in 1978, for example, containerized shipments represented less than 8 percent of total railcar loadings). The principal benefit of this alternative is that railroad and trucking management would be permitted to establish a price (rate) for the continuous movement of traffic without Commission intervention, essentially allowing free market forces to establish the rate. (Under present regulation, decisions of this kind are subject to Commission review.) However, participants will be required to adhere to the statutory provisions designed to prevent broad differences in rates that tend to favor or discriminate against a particular shipper or group of shippers. Similarly, this alternative will require participants to publish their rates in a public price sheet (tariff) with the accompanying 30-day notice period in order for the Commission to monitor

unjustified broad differences in rates, and to adhere to the Commission's present accounting and reporting requirements.

The major disadvantage is that the users of intermodal service would have little recourse—other than making a unilateral decision not to use a particular service—for a rate which is unreasonably disproportionate to the cost of providing the service. Under present regulation, concerned shippers could challenge an unreasonably high rate under the rate investigation and suspension provisions of the Interstate Commerce Act.

A second alternative would relax the rules and regulations governing the practices of motor carriers which participate in intermodal movements. At the present time, a motor carrier must have operating authority to serve the ultimate origin and destination points of a movement as well as the points at which it tenders traffic to or receives traffic from the railroad. This requirement discourages participation in intermodal plans, because a carrier has to seek new authority if the shipment consolidation points are changed. Similarly, carriers which do not now possess authority to perform transportation in intermodal service must petition the Commission for authority for each point at which they will perform service. This practice also tends to discourage efforts to experiment or develop intermodal plans. To remove this problem, the Commission is considering developing a so-called "master certificate," which would encompass a generalized nationwide finding of public convenience and necessity based on the foreseen benefits of TOFC/COFC service and competition.

The benefit of this second alternative is that it would eliminate the need for specific, localized authority to serve the interchange point, and eliminate the attendant delay that would accompany each application for authority. The disadvantage of this alternative is that carriers now involved in intermodal traffic plans could lose traffic they now handle to new carriers.

A third alternative would revise our current policies regarding participation by truck operators performing services under contract (contract carriers) in intermodal plans. At present, contract carriers are not permitted to participate in intermodal service; this alternative would permit contract carriers to enter into intermodal service and negotiate with railroads for service under agreed rates. The principal benefit of this alternative is that contracts would generally be of several years duration

and would reflect the individual needs and operating characteristics of the railroad and truck operator. This would lend stability to the intermodal plan and insure its continuance. A disadvantage is that the entrance of contract carriers into this freight market would further dilute the traffic available to existing truck operators.

#### Summary of Benefits

The principal benefit of revised TOFC/COFC regulations is that improved intermodal service will combine the best characteristics of rail and motor transportation by offering the long-haul cost and energy advantages of rail and the geographic operating flexibility of motor carriers. Moreover, it will offer containerized service, which may not now be available to some shippers because of present Commission regulatory policies, as a transportation alternative for shippers, and it will generate another source of revenues for the financially ailing railroad industry. Similarly, the increased competition that results from implementation of the proposal should be an effective force in allocating transportation resources and improving the quality of services.

#### Summary of Costs

We do not yet know the direct effect of the modified regulations on the costs associated with intermodal traffic. However, the reliance on market forces which should develop under all three alternatives could, in the long run, relieve inflationary pressures and defer or reduce the size of future increases in freight rates.

#### Sectors Affected

The alternatives under consideration would affect the railroad and trucking industries and users of commercial transportation services; it is conceivable that they will affect some geographical areas more than others.

The Commission staff expects the proposed rule to promote coordination of rail and motor services. This would more than likely force a realignment of the market for some freight. Some freight which is transported by an all-rail or all-motor movement, for example, could be diverted to a shared movement.

In addition, it will affect shippers who do not use intermodal traffic plans, as well as some low traffic-volume shippers, by giving them additional transportation alternatives. Because of the geographical flexibility of trucking, shippers not located on a rail line will have improved access to rail transportation.

The alternatives under consideration could have their most significant impact

in the western United States, where territories are more open and the long-haul benefits of rail transportation can be realized. Shippers in the western territories could conceivably benefit most under the improved regulations, if the Commission adopts them.

#### Related Regulations and Actions

*Internal:* "Practices of For-Hire Carriers of Property Participating in Trailer-on-Flatcar Services," 49 CFR 1090.

*External:* None.

#### Active Government Collaboration

None.

#### Timetable

NPRM—December 1979.

Hearing—January 1980 (Modified Procedure).

Final Rule—March 1980.

Regulatory Analysis—The ICC, as an independent agency, is not subject to the requirements of Executive Order 12044 for a regulatory analysis.

#### Available Documents

ANPRM—"Improvement of TOFC/COFC Regulation," 44 FR 49279, August 22, 1979.

"Substituted Service—Water for Motor Service (Fishy-back Service)—Alaskan Trade," 361 I.C.C. 359 (1979).

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#### ICC

Intercorporate hauling (Ex Parte No. MC-122)

#### Legal Authority

Interstate Commerce Act, 49 U.S.C. § 10524.

#### Statement of Problem

Critics of government intervention in truck transportation focus on allegations of the inefficiency that regulation causes. They say that prices for truck transportation are too high because regulated truck operators can collectively establish rates and because regulation imposes artificial constraints on entry into the trucking business and operational freedom. Accordingly, they argue that regulation prohibits business enterprises which perform their own trucking operations from engaging in efficient use of their equipment.

Critics of regulation claim that regulation distorts markets and distribution facilities and that it retards innovation in patterns of operation.

Those critics say that regulation imposes unnecessarily high costs on change because of the various administrative and legal requirements that it imposes on carriers. They believe that decisionmaking in a regulatory environment results in commodities being transported inefficiently and that a reliance on normal market forces would cure many of these problems.

In June 1977, at the request of the Commission, a task force studied and recommended to the Commission ways in which it could use market forces to improve regulation of the trucking industry. One recommendation was to relax the Commission's control over hauling between related corporations. At the present time transportation in furtherance of a primary business other than transportation is exempt from regulation by the Commission; this is so-called "private carriage." The statute does not define private carriage, but the Commission historically has defined the term narrowly to exclude transportation between corporations with a common owner; private carriage was limited to the transportation for and by a single corporation.

As a result of the task force recommendations, the Commission published an NPRM that will broaden the definition of private carriage to include (and thereby exempt from Commission regulation) transportation between and for members of a corporate family. Public response endorsed the change in policy. It is generally felt by private truck operators that a more liberal Commission policy over intercorporate hauling will provide opportunities to reduce the number of miles operated without loading, thereby allowing for the consolidation of fleets, improved fuel efficiency, and lower overall transportation costs.

This rulemaking will evaluate the need for a change in Commission policy.

#### Alternatives Under Consideration

There are four major alternatives under consideration in the proceeding.

The first is to maintain the status quo, i.e., do nothing additional. At the present time Commission regulations do not permit hauling between or for related corporations for compensation (it can be done, however, if it is performed without charge). The problem with this alternative is that it does not allow for improved efficiency in operation; rather, it discourages any change in current corporate transportation policies that would reduce fuel consumption or consolidate transportation fleets.

The second, third and fourth alternatives are related to the degree of

control a parent corporation has over its subsidiary, but will encourage change in corporate transportation policies and encourage efficient operations.

The second alternative will permit compensated intercorporate hauling (without Commission regulation) for and between corporations that are at least 50 percent commonly owned.

The major advantage, relative to the options that require a more restrictive level of ownership, is that a greater number of private shippers could take advantage of compensated intercorporate hauling opportunities.

The primary disadvantage is that advocates of compensated intercorporate hauling may have underestimated the diversion of traffic from regulated carriers and the resulting adverse economic impact on carriers. If such diversion took place, undesirable effects would be maximized with this option. Moreover, it provides for less gradual adjustment to a new regulation by shippers, carriers, and consumers who might be adversely affected than would be afforded by the other alternatives.

The third alternative would permit compensated intercorporate hauling only for and between corporations that are 100 percent commonly owned.

This option has the advantage of taking a big step toward realizing the overall net benefits which are possible through increased efficiency in equipment and fuel use, expansion of markets and competition, and improved transportation service. It will make possible the least number of opportunities for compensated intercorporate hauling and minimize adverse impact on regulated carriers. This alternative reflects a strong policy of gradualism toward change to ensure that the relaxation of intercorporate hauling regulation is more clearly understood by the Commission before more far-reaching changes are made.

The major disadvantage is that this alternative would be too restrictive. A survey by one of the respondents to ascertain the benefits of relaxed rules on intercorporate hauling indicates that roughly two-thirds of the 1500 corporations surveyed by that respondent would not be able to take advantage of the relaxed policy because they are not 100 percent commonly owned.

The fourth alternative (the one which ICC feels shows the most promise) will permit intercorporate hauling by corporations that are 80 percent commonly owned. This alternative is a compromise between the 100 percent and 50 percent common ownership levels. A policy of caution and

gradualism is reflected in this alternative, but it broadens the scope and size of overall net benefits; moreover, it is in consonance with Internal Revenue Service guidelines permitting consolidated financial reports at the 80 percent common ownership level and recognizing a subsidiary owned 80 percent or more by its parent as part of a corporate family.

The Commission's approach to the problem of intercorporate hauling is self-regulatory; the policy change, if the Commission adopts it, will broaden the area of corporate transportation that is exempt from regulation by the Commission. At the present time, a substantial amount of intercorporate hauling is performed without compensation.

#### Summary of Benefits

The primary motivating factor in using or expanding private transportation is the necessity to meet unusual service demands that regulated carriers find impractical or impossible to meet. (Cost reduction is a secondary or complementary motive.) Unusual service requirements include multistop delivery, tightly scheduled pickup and delivery, coordinated and controlled commodity flows between facilities, or use of specialized equipment.

The proposed policy change will allow a broader use of existing equipment for corporations which already have a private transportation fleet and will perhaps reduce empty operating miles by as much as 30 percent. Fleet consolidation and elimination of duplicate staff could result in as much as a 40 percent saving in overall transportation costs for a combined operation.

For corporations which do not now have but wish to institute their own trucking operations, the proposed policy change could allow for a reduction in transportation costs for the combined corporation by as much as 25 percent of what it would cost them for transportation by regulated trucking companies.

#### Summary of Costs

The proposed change in policy could virtually guarantee a reduction in direct costs for trucking between related corporations by removing a portion of corporate decisionmaking from regulatory overview. Estimates from some of the parties which responded to the NPRM indicate that cost savings which could result from the broader definition of private carriage would be as much as three cents per mile less than the present cost to corporations which operate their own transportation

fleet. Moreover, the policy change would alleviate the present burden on corporations to obtain operating certificates from the ICC where transportation is performed for and between a parent corporation and its subsidiary for compensation. A precise estimate of the savings to corporations is not available, but if present policy is changed, corporations would no longer have to obtain operating certificates, wait for accompanying agency action, or bear the expenses associated with those activities.

Similarly, there should be indirect cost savings to consumers. Although improved efficiency will not necessarily lower existing consumer prices (since a multitude of cost and competitive factors enter into pricing decisions), the change in policy should relieve inflationary pressure and defer or reduce future consumer price increases as corporate marketing decisions and inventory reduction, in response to better equipment availability and usage, lower overall production costs.

#### Sectors Affected

The proposed policy change will have broad impact because of the relationship of transportation costs to the price of commodities on market shelves.

The population nationwide will be indirectly affected, since the latest estimates show that 55 percent of overall inter-city truck tonnage moves by private carriage. The public ultimately pays these transportation costs in the wholesale or retail price of goods.

Corporations which now operate or desire in the future to operate private transportation fleets will be affected directly; similarly, regulated carriers will be affected, since they could lose a portion of current traffic that they now handle.

#### Related Regulations and Actions

*Internal:* "Intercorporate Parent-Subsidiary Transportation," 123 M.C.C. 768 (1975).

*External:* None.

#### Active Government Collaboration

Department of Transportation is appearing as a party in the proceeding and is advocating use of the 50 percent common ownership level to determine what constitutes a closely knit corporate family.

#### Timetable

Hearing—begins September 1979  
(Modified Procedure).

Final Rule—December 1979.

Regulatory Analysis—the ICC, as an independent agency, is not subject to the requirements of Executive Order 12044 for a regulatory analysis.

#### Available Documents

"Intercorporate Parent—Subsidiary Transportation," 123 M.C.C. 768 (1975).

"Status Report—Intercorporate Hauling Regulation," Bureau of Economics, Interstate Commerce Commission, December 1978.

"Request for Comments Intercorporate Hauling," 43 FR 58002, December 11, 1978.

NPRM, "Intercorporate Hauling" (Ex Parte No. MC-122) Proposed Policy Statement, 44 FR 42838, July 20, 1979.

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#### ICC

Western Coal Investigation—  
Guidelines for Railroad Rate Structure  
(Ex Parte No. 347)

#### Legal Authority

Interstate Commerce Act, 49 U.S.C. § 10501.

#### Statement of Problem

In 1976 the Interstate Commerce Commission (the Commission) instituted an investigation of the railroad industry's freight rate structure on coal in response to allegations that prices for coal transportation were unreasonably high in relation to the costs. A public utility, which is a significant user of coal in generating electricity, argued that ratemaking for coal movements without an established rate ceiling does not properly consider the interests of the public, which ultimately bears the transportation costs.

That investigation revealed that a new and unprecedented demand for coal produced in the Western United States (so-called western coal), and the advantages of intermodal (combined rail and truck) transportation in the movement of coal created circumstances and conditions that distinguish coal production and transportation in the West from coal production and transportation in the East or Midwest.

The demand for western coal continues to increase, and the price of coal continues to increase accordingly. Consequently, the railroads, which transport a substantial portion of western coal shipments, are setting new, and usually higher shipping rates. The transportation rate ultimately affects

and may be a significant part of the delivered price of coal.

The principal task of this proceeding will be to determine appropriate minimum and maximum rate levels for large-volume movements (10,000 tons) of bituminous and lignite coal from Montana, North and South Dakota, Colorado, Wyoming, Utah, Arizona, and New Mexico to points in the United States where rail carriers are found to dominate all other modes in the movement of coal.

#### Alternatives Under Consideration

The major alternative under consideration is the establishment of upper and lower limits within which rail carriers will be free to change rates without intervention by the Commission (a so-called "zone of reasonableness"). There are several ways this zone can be defined—(1) as a percentage of rates based on the rail uniform freight classification (so-called "class rates"), (2) as a percentage of rates published for specified commodities (so-called commodity rates), (3) as a ratio of rates to variable or fully-allocated cost levels, or (4) some other basis or market condition peculiar to the movement of western coal.

The Commission will determine the manner of defining the zone from the comments it receives from interested parties.

#### Summary of Benefits

The benefit of establishing guidelines is the latitude it will give rail management in pricing western coal movements without fear of the Commission postponing the effectiveness of the established rates.

Similarly, the guidelines will help all users of rail service in coal movements to predict and become involved in the negotiation of western coal rates. The criteria the guidelines establish will also expedite the litigation of numerous western coal rate proceedings, because once the guidelines are in place, issues of whether rates bear a reasonable relation to costs or exceed the established limits will be reduced, for the most part, to a simple mathematical computation.

#### Summary of Costs

Guidelines setting maximum rate levels should keep costs for the transportation of western coal below those which would result without regulation. We cannot yet establish the precise cost savings, but in recent rate changes on coal movements some rates were increased by as much as 22 percent. The guidelines resulting from this proceeding will not necessarily

prevent rate increases, but they should limit increases in rates to provable increases in costs. Presumably, but not necessarily, such increases in costs will equal changes in overall economic price indices.

Also, the costs of negotiating and litigating western coal rates should decrease indirectly, since the guidelines will indicate how high rail carriers, which substantially dominate the market, can raise rates without incurring the time delays that accompany the Commission's processing of complaints.

#### Sectors Affected

The proposed guidelines will have broad impact because of the relationship of transportation costs for coal to the delivered price of coal.

The guidelines will affect indirectly the population nationwide, since everyone uses energy. Moreover, today coal is primarily used for generating electricity, but in the future it may become the major source of energy for other processes, such as steel production or chemical manufacturing. The public pays for the price of coal when it pays electricity bills and the public will bear a portion of the costs of coal when it is used in other processes.

The guidelines will affect public utilities directly particularly electric utilities. Steel manufacturers and chemical companies are other industries that rely heavily on coal in the processing of raw materials and end products, and the rate levels of western coal movements will affect them similarly.

Cities west of the Mississippi have been the first affected by western coal railroad rates, since those cities have been the traditional users of western coal. However, the use of western coal is expanding, and it is conceivable that the price of coal will affect all regions of the country.

#### Related Regulations and Actions

*Internal:* "Investigation of Railroad Freight Rate Structure—Coal," 345 I.C.C. 493 (1976).

*External:* None.

#### Active Government Collaboration

Department of Energy and Department of Transportation have offered, by separate pleadings, alternatives for establishing maximum rate levels.

#### Timetable

Hearing—begins October 1979.  
Notice of Proposed Guidelines (NPG)—Fall 1979.  
Final Guidelines—summer 1980.  
Regulatory Analysis—The ICC, as an

independent agency, is not subject to the requirements of Executive Order 12044 for a regulatory analysis.

#### Available Documents

Ex Parte No. 270 (Sub-No. 4), "Investigation of Railroad Freight Rate Structure—Coal," 345 I.C.C. 493 (1976).

Ex Parte No. 338, "Standard and Procedures for the Establishment of Adequate Railroad Revenue Levels," 359 I.C.C. 270 (1978).

NPRM, "Western Coal Investigation—Guidelines for Railroad Rate Structure," (Ex Parte No. 347), 43 FR 22151, May 23, 1978.

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## POSTAL RATE COMMISSION

Postal Rate Commission Docket MC79-2, to consider a request of the U.S. Postal Service for the establishment of an Express Mail Metro Service subclass filed with the Commission on December 7, 1978

#### Legal Authority

The Postal Reorganization Act of 1970, as amended, §§ 3621, 3622 and 3623, 39 U.S.C. § 3601 (1970).

#### Statement of Problem

This proposed new first-class mail subclass will provide expedited, same day delivery service within selected metropolitan service areas.

Although the present system of first-class mail is designed to provide priority delivery of mail throughout the country and within metropolitan areas, several factors make it an unsuitable system for mailers looking for intrametropolitan same-day delivery service of special mail matter. These include: (1) no requirement for insuring mailers to meet mail collection times, (2) regular letter-carrier pick-up schedules which do not always allow for sameday delivery service, and (3) mailers with delivery deadlines who are not satisfied with the consistency of delivery that regular first-class mail provides. There are similar problems with "Special Delivery," which is a priority mail subclass of first-class mail. These include: (1) the design of the service, which was not intended to provide same-day delivery, (2) lack of customer education on "Special Delivery" service standards; for example, "Special Delivery" labels have

not met with wide customer acceptance, since many customers still prefer to mark the envelopes with "Special Delivery" markings themselves, and (3) the difficulty of identifying "Special Delivery" mail, since many mailers often bundle it with other mail.

Based on the above conclusions, the Postal Service believes Express Mail Metro Service would fulfill the need for a rapid, same-day delivery service in the local marketplace.

Initially, the Postal Service has proposed this expedited service in three metropolitan areas: Chicago, Illinois; Columbus, Ohio; and Gulfport, Mississippi. If the Postal Rate Commission approves this subclass and it is successful, the Postal Service plans to offer Express Mail Metro Service in 31 major metropolitan post offices.

Express Mail Metro Service, while meeting the unique needs of mailers for rapid, same-day delivery, will also take advantage of existing techniques, procedures and practices within the Postal Service. For example, metro mail will move through a separate mail stream in highly visible, easily identifiable containers, thereby permitting instant recognition and top priority handling.

While this service is designed to fulfill a specific need for rapid movement of mail within a local business community, any mailer may use the service by bringing his mail to designated post offices in a participating city. In addition, customers using metro mail may arrange with the Postal Service for pick-up.

**Service Standards**

Customers may use any one of the following three options for delivery of Express Mail Metro Service:

Tendered By	Delivered By
10:00 a.m. _____	5:00 p.m. of same day.
Noon _____	5:00 p.m. of same day.
5:00 p.m. _____	10:00 a.m. of next day.

The Postal Service would back delivery standards by a service guarantee that provides full postage refund if delivery is late. The Postal Service would also provide, at no additional cost, Standard Express Mail insurance against loss, damage or rifling.

**Proposed Rates**

The Postal Service desires to make Express Mail Metro Service easily understood and readily acceptable to the public and plans to offer a simplified rate structure that has three basic prices, depending on weight.

Weight	Rate
1 lb. and under _____	\$9
Over 1 through 8 lbs. _____	12
Over 8 through 70 lbs. _____	15

In addition, there will be a pick-up charge of \$5.25 per stop, regardless of the number of items picked up.

**Alternatives Under Consideration**

Alternatives under the Commission's consideration have been presented by private courier services who oppose the institution of such a service. These include: Purolator Courier Corporation, Air Courier Conference of America, American Package Express Carriers Association, Associated Third Class Mailers, Association of Messenger Services, Inc., Association of Milwaukee Messenger Services, Avon Products, Inc., Central Carrier Corporation, Columbus Parcel Service, Inc., Council of Public Utility Mailers, Dow Jones and Company, Inc., Gelco Courier Services, Inc., U.S. Department of Justice, Messenger Service Association of Illinois, Metro Courier Committee, Metropolitan Messenger and Delivery Service Corporation, National Association of Greeting Card Publishers, J.C. Penney Company, Inc., and United Parcel Service. The Small Business Association also takes the same position.

The Officer of the Postal Rate Commission, who represents the general public's interests in all cases before the Commission, is proposing lower rates for Express Mail Metro Service than the Postal Service has suggested. He also proposes that the Postal Service implement it on a temporary basis, until it can gather actual cost and impact information.

**Summary of Benefits**

As we stated earlier, the Postal Service maintains that the proposed Express Mail Metro Service will provide the mailer with a needed, expeditious same-day delivery service in selected metropolitan areas.

**Summary of Costs**

Until the Commission issues its decision, the law governing the operations of the Postal Rate Commission prohibits the Commission from commenting on the economic effects of the Service's proposal. However, witnesses for the Postal Service believe that Express Mail Metro Service will increase the Service's annual net revenues by \$34 million.

**Sectors Affected**

This proposal would affect any mailer who desires to use an expedited same-day delivery service of time-sensitive materials within a local business community; such a mailer will have the option of using the Postal Service or private courier companies. However, the private courier companies maintain that this would be government interference which adversely affects their businesses.

**Related Regulations and Actions**

None.

**Active Government Collaboration**

None.

**Timetable**

Commission decision recommended—December 1979.

Final decision by Governors of Postal Service following Commission decision and based on the Commission record.

**Available Documents**

Commission Notice instituting procedures for Postal Service's Request for the establishment of an Express Mail Metro Service Subclass, 43 FR 68664, December 15, 1978. Transcripts of Hearings which began on May 14, 1979 and were completed on September 25, 1979, as well as Testimony, Exhibits, Workpapers, Library References/ Studies, Interrogatories and Answers. Requests for Oral Cross-Examination and Written Cross-Examination, Commission Orders and Notices, Presiding Officer's Orders, Rulings, Motions, and Notices, Petitions for Leave to Intervene and Request for Limited Participation, Commission's Recommended Decision (when issued) for Docket MC79-2.

For further information, please call the Commission's Docket Room at 254-3800 or write 2000 L Street, N.W., Suite 500, Washington, D.C. 20268.

**Agency Contact**

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**PRC**

**Postal Rate Commission Docket MC79-3, instituted by the Commission pursuant to 39 U.S.C. § 3623(b), to hear evidence on the preferential treatment, commonly referred to as "red-tag" treatment, afforded certain time-value publications sent as second-class mail.**

**Legal Authority**

The Postal Reorganization Act of 1970, as amended, §§ 3621, 3622 and 3623, 39 U.S.C. § 3601 (1970).

**Statement of Problem**

The Commission established this case on January 4, 1979.

This proceeding stemmed from a previous case, Docket MC76-2, where the Officer of the Postal Rate Commission, who represents the interests of the general public in all Commission cases, proposed to expand to all second-class mail users who request it, the availability of the preferred (red-tag) treatment afforded certain time-sensitive publications and to impose a surcharge for this preferential treatment. This preferential treatment allows such mail to be handled on a priority basis similar to that given first-class mail.

When the Officer of the Postal Rate Commission made his proposal in the first case, the Commission in its decision found insufficient evidence to justify a surcharge. The Commission also found inadequate cost information to justify expansion of the "red-tag" treatment to any second-class mailer requesting it. (Second-class mailers mail magazines and newspapers.)

In the last postal rate case, Docket R77-1, filed two months after the record had closed on the original red-tag surcharge proposal, July 13, 1977, the Postal Service introduced a new costing concept—service-related cost (SRC), which imposed a higher cost for priority handling. However, there was insufficient data and time to pursue the applicability of service-related cost to red-tag service mail in Docket R77-1. Since the SRC concept was not involved in the original red-tag proposal, the Commission felt it should institute a new case to investigate the appropriateness of a red-tag surcharge for service using the SRC costing theory. If a surcharge were to be established, it would also be necessary to explore the feasibility of offering such priority handling to all second-class mailers willing to pay the surcharge.

**Alternatives Under Consideration**

Alternatives under consideration are presented by: red-tag mailers, who are opposed to a surcharge, because it

would increase their rates and possibly force them to look for alternative methods of delivery; the Postal Service, who takes no position on the necessity for a surcharge for second-class mail; the Officer of the Commission, who represents the general public's interests and recommends that a clearly defined special service be established to provide expeditious delivery to second-class publications and that costs associated with providing such preferential treatment be borne only by publications using this service.

Parties in the proceeding include: United States Postal Service, Agricultural Publishers Association, Inc., American Business Press, American Library Association, American Newspaper Publishers Association, American Retail Federation, Association of American Publishers, Inc., and Book Manufacturers Institute, Association of Second Class Mail Publications, Catholic Press Association, Classroom Publishers Association, Department of Defense, Direct Mail/Marketing Association, Inc., Dow Jones & Company, Inc., Gestetner Corporation, Macmillan, Inc., Magazine Publishers Association, Inc., Meredith Corporation, The National Industrial Traffic League, National Newspaper Association, Samuel C. Pennington, Purolator Services, Inc., The Readers Digest Association, Inc., Time Incorporated, Fairchild Publications, International Labor Press Association AFL-CIO, James T. Lowder, Publisher, Ohio Antique Review, Inc., National Association of Greeting Card Publishers, The New Republican, Inc., New York Magazine Company, Inc., The New Yorker Magazine, Inc., Newsweek, Inc., U.S. News & World Report, Inc., United Parcel Service, and the Officer of the Commission.

**Summary of Benefits**

The red-tag proposal was brought before the Commission by the Officer of the Commission in a previous case. The Commission felt there were some issues still outstanding and instituted this case to answer those questions, with a view toward establishing a classification schedule that imposes costs for priority mail handling. This would make the mail classification schedule more fair and equitable to all mailers.

**Summary of Costs**

Witnesses of the Officer of the Postal Rate Commission estimate, based on 1975 mail volume figures, that the Postal Service would realize approximately \$66 million in additional revenue per year if it establishes this subclass. However,

the Postal Service has given no positive figures. The Postal Rate Commission will investigate this matter during hearings on this case and will attempt to get a more refined cost figure.

**Sectors Affected**

If the Postal Service established this subclass and imposed a surcharge, it would affect all second-class mailers. If so, users of red-tag service would pay a higher rate, and non-users might have their rates reduced.

**Related Regulations and Actions**

None.

**Active Government Collaboration**

None.

**Timetable**

The Commission instituted this proceeding on January 4, 1979.

Because this case did not originate with the Postal Service, as is usual, the Commission directed the Postal Service to file its case by March 15, 1979. However, the Postal Service was unable to meet this deadline and the date of filing was reset to May 31, 1979. The deadline for other parties to file their responses was changed from June 15, 1979, to June 29, 1979. Hearings began on September 11, 1979. No date has yet been set for closing the record, since this will depend on the time needed for cross-examining witnesses.

**Available Documents**

Commission Order No. 228, instituting the proceeding in MC79-3 and the Notice sent to the Federal Register on January 10, 1979, 44 FR 2211-214.

Transcripts of Hearings, as well as Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, Requests for Oral Cross-Examination and Written Cross-Examination.

Commission Orders and Notices; Presiding Officer's Orders, Rulings, Motions and Notices, Petitions for Leave to Intervene and Request for Limited Participation; Commission's Recommended Decision (when issued) for Docket MC79-3.

For further information, please call the Commission's Docket Room at 254-3000 or write 2000 L Street, N.W., Suite 500, Washington, D.C. 20268.

**Agency Contact**

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**INDEX I: SECTORS AFFECTED BY REGULATORY ACTIONS**

This index highlights those sectors of our society—economic, environmental, and social—which the agencies have identified as being affected by the regulations under development that are described in the Calendar. This is not intended to be a comprehensive index listing every sector affected either directly or indirectly. It is designed to display only those primary sectors most directly affected by the proposal. For full information on the effects of the regulation, you must refer to the full description of the regulation.

The index is organized alphabetically by Executive, and then by Independent agencies, by unit within the agency, and then by the title of the regulation under development by the agency. Across the top of the page, the general sectors which are affected are organized into three groups, with specific categories of sectors affected listed under each general category.

To use the index if, for instance, you own a business organization and wished to see if it was affected by a proposed regulation, you would look across the top of the page for the general category of "Trade and Industry", and within it, for the category of "Business and Industry". You would then look down the Business and Industry category until you found your particular business. You would see the name of the regulation, and the page number on which it appears, and would then have a quick reference to the regulations which might concern you most. Similarly, if you wished to know if any regulations affected the environment, your personal health and safety, or the transportation that you use to obtain your goods, you would look down the appropriate (i.e., Environmental and Natural Resources, Health and Safety or Transportation) column and be able quickly to see regulations that are of concern to you.

The Sectors Affected categories are listed below.

Trade and Industry includes:

**Business and Industry**

Some agencies have included SIC codes in the narrative describing sectors affected by the regulation. We are considering adding the SIC codes to this category in the index, and would welcome comments on whether this addition would be useful to readers.

**Transportation**

Within the Business and Industry category, there were so many transportation-related sectors that we created a separate column to indicate

the various modes of transportation that may be affected by the regulations. These include parts of the transportation industry, such as air or land—non-rail.

**Environment and Natural Resources**

In this category, the sectors of the environment which may be affected by the actions under development are listed, e.g. air, land, water. Natural resources that could be affected, such as plants and animals, or marine life, are also noted.

**Energy**

We identify a more specific sector of the Environment and Natural Resources category in this column where specific sources of energy such as hydroelectric power are listed, as well as policies and programs dealing with energy such as conservation or pricing.

**Health and Safety**

This category includes actions that may affect human health and safety, such as labeling regulations, as well as specific programs such as health services, and topics of concern in health, such as cancer or nutrition.

The category also includes safety issues such as road and air safety, as well as specific places, such as the workplace, that would be made more safe by the regulation.

**Special Populations**

The final category in this broad group includes population groups which agencies have identified as being potentially affected by the regulation. They can include spatial groups such as "urban dwellers", employment grouping such as "miners" or physical groups such as "handicapped".

Other includes:

**State and Local Government**

Entries appear in this category if State or local government may be involved in implementing the regulatory action, or if they may be regulated themselves by the action.

**Geographical**

In this category, the agencies have indicated certain areas of the country that may be affected by the regulation such as "Western States" or a specific State or area within the country.

**Comments**

This category provides space for any comments which the agencies wish to make about special characteristics of the regulation, or sectors affected which do not fit into any of the major categories.

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES			OTHER	COMMENTS
			BUSINESS AND INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY		
USDA-RMS	Amendments to Federal Seed Act Regulations	68320	Seed						
USDA-AMS	Proposed Federal Milk Order for Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho)	68318	Milk					S.W. Idaho; E. Oregon	
USDA-FNS	Regulation by the Secretary of Agriculture of foods sold on school premises in competition with the National School Lunch Program and the School Breakfast Program	68263	Snack Food			Nutrition	Children	Local	
USDA-FSQS	Proposed Net Weight Regulations	68321	Meat; Poultry				Consumers		
USDA-FSQS	Voluntary Meat and Poultry Plant Quality Control Systems	68265	Meat; Poultry				Food Safety		
USDA-SCS	Watershed Protection and Flood Prevention Program	68208					Safety	State; Local	
DOC-HARAD	Operating-differential subsidy for bulk cargo vessels engaged in world wide service; essential service requirement (46 CFR 252.21)	68338	Cargo Carrier-Sea	Maritime					
DOC-NOAA	Regulations implementing a fishery management plan for the butterfish fishery of the Northwest Atlantic Ocean under the Fishery Conservation and Management Act of 1976, as amended	68209	Fisheries		Marine Life				Northwest Atlantic
DOC-NOAA	Regulations implementing a fishery management plan for the groundfish fishery for the Bering Sea/Aleutian Island area under the Fishery Conservation and Management Act of 1976, as amended	68211	Fisheries		Marine Life				Alaska; Some Foreign Countries
DOC-NOAA	Regulations implementing a preliminary fishery management plan for Pacific billfish and oceanic sharks under the Fishery Conservation and Management Act of 1976, as amended	68213	Fisheries		Marine Life				Pacific Coast Area; Pacific Trust Territories

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES			OTHER	COMMENTS
			BUSINESS AND INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY		
DOE-NOAA-DC2N	Channel Islands Marine Sanctuary Regulations	68216	Oil; Gas	Marine Life		State	California		
DOE-RCS HUD-NVACP	Energy performance standards for new buildings	68218	Construction		Conservation				
DOE-CS	Energy Conservation Program for Consumer Products (Other than Automobiles)	68219	Consumer Product		Conservation		State; Local		
DOE-ERA	Amendments to Puerto Rican naphtha entitlements regulations	68220	Petrochemical					Puerto Rico	
DOE-ERA	Amendments to the emergency provisions of the crude oil buy/sell program	68222	Oil						
DOE-ERA	Gasohol Marketing Regulations	68223	Gasohol		New Sources				
DOE-ERA	Incentives for refinery investment	68224	Oil		Increased Supplies				
DOE-ERA	Natural gas curtailment prioritization and related issues	68225	Gas		Allocation				
DOE-RA	Outer continental shelf (OCS) sequential bidding regulations	68226	Oil		New Supplies			Continental Shelf	
DOE-RA	Profit share bidding systems regulations for federal outer continental shelf (OCS) oil and gas leases	68227	Oil; Gas		New Supplies			Continental Shelf	
DOE-RA	Proposed outer continental shelf (OCS) bidding systems regulations	68228	Oil; Gas		New Supplies			Continental Shelf	
HEM-FDA	Chemical Compounds Used in Food Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues	68267	Chemical						Cancer
HEM-FDA	Food Labeling Initiatives	68269	Food						Labeling
HEM-FDA	Prescription Drug Products; Patient Labeling Requirements	68270	Drug						Labeling



INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES					OTHER	COMMENTS	
			BUSINESS AND INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY	SPECIAL POPULATIONS	STATE AND LOCAL GOVERNMENT			GEOGRAPHICAL AREAS
DOL-ESA	Proposed amendment to the Sex Discrimination Guidelines (41 CFR 60-20) governing insurance and other employee benefit plans	68313	General; Insurance									Sex Non-Discrimin.; Benefit Plans
DOL-ETA	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs	68314						Handicapped		State; Local		Non-Discrimin.
DOL-MSHA	Mandatory safety standards for surface coal mines and surface areas of underground coal mines	68274	Coal Mining				Workplace		Miners			
DOL-MSHA	Regulations setting forth requirements for safety and health training for mine construction workers	68275	Surface Mining; Construction				Workplace		Miners			
DOL-MSHA	Requirements for construction and maintenance of impoundment and tailings piles at metal and nonmetal mines	68276	Mining				General		Miners	State		
DOL-MSHA	Safety and health standards for construction work at all surface mines and surface areas of underground mines	68277	Mining; Construction				Workplace			State		
DOL-OSHA	Chemical Warning Systems (chemical Labeling)	68278	Chemical				Labeling					
DOL-OSHA	Generic standard for occupational exposure to pesticides during manufacture and formulation	68279	Pesticide				Workplace					
DOL-OSHA	Regulation for reducing safety and health hazards in abrasive blasting operations	68280	Construction				Workplaces					
DOL-OSHA	Safety and health regulations for construction activities in tunnels and shafts	68282	Construction				Workplace					
DOL-OSHA	Safety standard for walking and working surfaces in general industry	68283	General				Workplace					

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES				OTHER COMMENTS			
			BUSINESS AND INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY	SPECIAL POPULATIONS		STATE AND LOCAL GOVERNMENT	GEOGRAPHICAL AREAS	
DOT-OSHA	Standard for occupational exposures to hexavalent chromium	68284	General				Workplace					
DOT-FAA	Flammability standards for crewmember uniforms	68286	Aviation; Textile	Air			Flammability Tests					
DOT-FHWA	Certification of vehicle size and weight enforcement	68336	Trucking	Land-Non-Rail			Road Safety		State			
DOT-FHWA	Design Standards for highways -- geometric design standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways	68340	Surface Transp.	Land-Non-Rail			Road Safety		State			
DOT-FHWA	Hours of service of drivers	68287	Trucking; Busing	Land-Non-Rail			Road Safety					
DOT-FHWA	Interstate maintenance guidelines	68341	Surface Transportation	Land-Non-Rail			Road Safety		State	Urban Area; Eastern Seaboard		
DOT-FHWA	Minimum cab space dimensions	68288	Trucking	Land-Non-Rail			Workplace		State			
DOT-FHWA	Withdrawal of Interstate segments and substitution of alternative transportation projects	68342	Surface Transportation	Land-Rail and Non-Rail					State; Local			
DOT-FRA	Alerting lights display for locomotives	68288	Rail Transportation	Land-Rail			Road Safety					
DOT-NHTSA	Fuel economy standards for model years 1982-85 light trucks	68234	Light Trucks	Auto			Gasoline Conservation					
DOT-USCG	Construction and equipment for existing self-propelled vessels carrying bulk liquefied gases	68289	Shipping	Maritime			Workplace					
DOT-USCG	Construction standards for the prevention of pollution from new tank barges due to accidental hull damage; and regulatory action to reduce pollution from existing tank barges due to accidental hull damage	68295	Shipping	Maritime	Marine		General					

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES			OTHER	COMMENTS
			BUSINESS AND INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY		
TREAS-ATF	Advertising Regulations under the Federal Alcohol Administration Act	68323	Alcohol; Advertising						
TREAS-ATF	Partial Ingredient Labeling of Wine, Distilled Spirits, and Malt Beverages	68324	Alcohol		Labeling		State		
TREAS-ATF	Revision of the Distilled Spirits Tax System	68325	Alcohol					Taxes	
TREAS-ATF	Unlawful Trade Practices under the Federal Alcohol Administration Act	68326	Alcohol; Trade Practices						
EPA-OAHR	Environmental Standard for Inactive Uranium Mill Tailings	68290		Radiation		Cancer		West	
EPA-OAHR	Gaseous Emission Regulations for 1983 and Later Model Year Heavy-duty Vehicles	68237	Auto	Trucking	Air	General			
EPA-OAHR	Gaseous Emission Regulations for 1985 and Later Model Year Heavy-duty Vehicles	68236	Auto	Trucking	Air	General			
EPA-OAHR	Listing of coke oven emissions as a hazardous air pollutant and development of emission limitations	68238	Steel		Air	Cancer		Ohio; Indiana; Penna.	
EPA-OAHR	National emission standards for hazardous air pollutants - benzene	68239	Chemical		Air	Cancer		East Coast; Gulf of Mexico	
EPA-OAHR	Noise Emission Standard for Newly Manufactured Motorcycles	68240	Auto; Motor Cycle	Motorcycle	Noise	General			
EPA-OAHR	Noise Emission Standard for Newly Manufactured Wheel and Crawler Tractors	68241	Auto; Wheel and Crawler		Noise	General			
EPA-OAHR	Particulate Regulations for Light-duty Diesel Vehicles	68242	Auto	Auto-Light Trucks	Air	Respiratory			
EPA-OAHR	Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer	68292	Chemical		Air	Cancer			

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES				OTHER	COMMENTS	
			BUSINESS AND INDUSTRY		ENVIRONMENT AND NATURAL RESOURCES	HEALTH AND SAFETY	SPECIAL POPULATIONS	STATE AND LOCAL GOVERNMENT			GEOGRAPHICAL AREAS
			Light Trucks	Auto							
EPA-OANR	Proposed Emission Regulations for 1983 and Later Model Year Light-Duty Trucks	68243	Light Trucks	Auto	Air	General	General				
EPA-OANR	Regulations for the Prevention of Significant Deterioration (PSD) resulting from hydrocarbons for carbon monoxide, nitrogen oxides, ozone and lead (PSD Set II)	68244	General	General	Air	General	General	State			
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide (CO)	68245	Auto	Auto	Air	Auto; Trucks	Cardio-Vascular	State; Local	Urban		
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter (PM)	68246	Heavy	Heavy	Air		Respiratory	State; Local			
EPA-OANR	Standards of performance to control atmospheric emissions from industrial boilers	68248	Units of Industrial Boilers		Air		General				
EPA-OANR	Review of the National Ambient Air Quality Standards for sulfur dioxide, Quality Standards for sulfur dioxide,	68247	Fossil Fuel Fired Plants		Air		Respiratory	State; Local			
EPA-OANR	Review of the National Ambient Air Quality Standards for Nitrogen Dioxide	68248	Heavy		Air		Respiratory	State; Local			
EPA-OANR	Visibility Plan Requirements	68249	General		Air		Aesthetics	State; Local	West; National Parks		
EPA-OPTS	Pesticide Registration Guidelines	68294	Auto		Air		General				
EPA-OPTS	Rules and notice forms for premanufacture notification of New Chemical Substances	68294	Chemical				General				
EPA-OPTS	Rules restricting the commercial and industrial use of asbestos fibers	68295	Construction				Cancer and Respiratory				
EPA-OPTS	Standards and Rules for Testing of Chemical Substances and Mixtures	68297	Chemical				General				
EPA-ORD	Fuels and Fuel Additives Registration	68250	Agri-Chemical				General				

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES			OTHER	COMMENTS
			INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY		
EPA-ORWH	Control of Organic Chemicals in Drinking Water	68208	Water Treatment Plant	Water	General		State; Local		
EPA-ORWH	Effluent Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants into Navigable Waterways	68251	Steam Electric Utility	Water; Marine Life	Drinking Water		State		
EPA-ORWH	Hazardous Waste Regulations: Core regulations to control hazardous solid waste from generation to final disposal	68200	General	Land-Nonfill	General		State		
EECC	Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained	68316	General				State; Local	Employees; Labor Org.; Educ. Instit.	
OSI-IRRS	Freedom of Information Act requests for national security classified information in the National Archives	68317	General					National Security	
NCUA	Organizing a Federal Credit Union	68259	Credit Unions						
VA	Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance	68318	General				State; Local		
CAB	Air Carrier Fitness	68343	Aviation	Air	Air Safety		Air Travelers		
CAB	Air Carrier Insurance and Liability	68344	Aviation; Insurance	Air			Air Travelers		
CAB	Essential Air Service Subsidy Guidelines	68344	Aviation	Air			Air Travelers to and from Small Communities		
CAB	Plain English for Airline/Passenger Contracts	68346	Aviation	Air			Air Travelers		
CPSC	Consumer Products Containing Asbestos	68302	Asbestos-related		Cancel				
CPSC	Omnidirectional Citizen Band Base Station Antenna Standard	68304	Communication		Electrical				







**INDEX II: DATE OF NEXT  
REGULATORY ACTION**

This index graphically shows the anticipated date of the next regulatory action that the agency plans to take for each regulation. The actions fall into four general categories: ANPRM (the date on which the Agency or Department plans to publish an Advance Notice of Proposed Rulemaking in the Federal Register), NPRM (the date on which the Agency or Department plans to publish a Notice Proposed Rulemaking in the Federal Register), Final Rule (the date on which the agency plans to publish the final rule in the Federal Register), and Other, the category that indicates the date of the next next anticipated action that is different from the above three categories. Independent agencies are most likely to have "other" actions, such as Notices of Inquiry, Final Guidelines, or Commission Decisions.

By referring to the Timetable category placed at the end of each entry in the Calendar, the reader can see the anticipated schedule for all future actions on each regulation. This index provides a handy reference for the most immediate action planned in each case.

Note: In every case, these dates are estimated. For current information on an action, call the agency contact listed for each entry.

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV 79	DEC 79	JAN 80	FEB 80	MAR 80	APR 80	MAY 80	JUN 80	JUL 80	AUG 80	SEP 80	OCT 80	NOV 80	DEC 80	1981
USDA-AMS	Amendments to Federal Seed Act Regulations	68320															
USDA-AMS	Proposed Federal Milk Order for Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho)	68318		F													
USDA-FNS	Regulation by the Secretary of Agriculture of foods sold on school premises in competition with the National School Lunch Program and the School Breakfast Program	68263			F												
USDA-FSOS	Proposed Net Weight Regulations	68321		N or F													
USDA-FSOS	Voluntary Meat and Poultry Plant Quality Control Systems	68265				F											
USDA-SCS	Watershed Protection and Flood Prevention Program	68208												N			
DOC-MARAD	Operating-differential subsidy for bulk cargo vessels engaged in world wide service; essential service requirement (46 CFR 252.21)	68336		F													
DOC-NOAA	Regulations implementing a fishery management plan for the butterfish fishery of the Northwest Atlantic Ocean under the Fishery Conservation and Management Act of 1976, as amended	68209															
DOC-NOAA	Regulations implementing a fishery management plan for the groundfish fishery for the Bering Sea/Aleutian Island area under the Fishery Conservation and Management Act of 1976, as amended	68211															
DOC-NOAA	Regulations implementing a preliminary fishery management plan for Pacific billfish and oceanic sharks under the Fishery Conservation and Management Act of 1976, as amended	68213															
DOC-NOAA-OC2M	Channel Islands Marine Sanctuary Regulations	68216															

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV '79	DEC '79	JAN '80	FEB '80	MAR '80	APR '80	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	1981
DOE-BCS HUD-NVACP	Energy performance standards for new buildings	68218	N														
DOE-CS	Energy Conservation Program for Consumer Products (Other than Automobiles)	68219															
DOE-ERA	Amendments to Puerto Rican naphtha entitlements regulations	68220	N														
DOE-ERA	Amendments to the emergency provisions of the crude oil buy/sell program	68222	N														
DOE-ERA	Gasohol Marketing Regulations	68223	N														
DOE-ERA	Incentives for refinery investment	68224	N														
DOE-ERA	Natural gas curtailment priorities and related issues	68225				N											
DOE-RA	Outer continental shelf (OCS) sequential bidding regulations	68226				F											
DOE-RA	Profit share bidding systems regulations for federal outer continental shelf (OCS) oil and gas leases	68227				F											
DOE-RA	Proposed outer continental shelf (OCS) bidding systems regulations	68228	F														
HEW-FDA	Chemical Compounds Used in Food Producing Animals; Criteria and Procedures For Evaluating Assays for Carcinogenic Residues	68267											O				
HEW-FDA	Food Labeling Initiatives	69268															
HEW-FDA	Prescription Drug Products; Patient Labeling Requirements	69270									F						
HEW-HCFA	Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities	69271								N							
HEW-HCFA	Life Safety Code in Hospitals, Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)	69272														O	

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV '79	DEC '79	JAN '80	FEB '80	MAR '80	APR '80	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	1981
HEW-ECFA	Uniform Reporting Systems for Health Services Facilities and Organizations	68273	N														
HUD-NVACP DOE-BCS	Energy performance standards for new buildings	68218	N														
DOI-BLM	Surface management of mining claims located on the public lands	68229	N														
DOI-FWS	Endangered Species Act, S4 - Regulations for Listing Endangered and Threatened Wildlife and Plants	68230		F													
DOI-ECRS	Rules and Regulations Pertaining to the Urban Park and Recreation Recovery Program	68231		F													
DOI-WPRS	Rules and regulations for acreage limitation under Federal Reclamation law	68232														N	
DOJ-BOP	Non-Discrimination Towards Inmates	68310		N													
DOJ-CRD	Regulations prohibiting discrimination solely on the basis of handicap in Federally assisted programs	68310							F								
DOJ-INS	Replacement of Alien Registration Receipt Cards - Requirement for Single Fingerprint and Personal Appearance	68311															
DOJ-LEAA	Equal Service Program Guidelines	68312		N													
DOJ-LEAA	Procedures Relating to the Implementation of the National Environmental Policy Act	68233															
DOL-ESA	Proposed amendment to the Sex Discrimination Guidelines (41 CFR 60-20) governing insurance and other employee benefit plans	68313															
DOL-ETA	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs	68314															

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

Date unknown, contingent on EEOC action.

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV '79	DEC '79	JAN '80	FEB '80	MAR '80	APR '80	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	1981
DOL-MSHA	Mandatory safety standards for surface coal mines and surface areas of underground coal mines	68274	A														
DOL-MSHA	Regulations setting forth requirements for safety and health training for mine construction workers	68276				A											
DOL-MSHA	Requirements for construction and maintenance of impoundments and tailings piles at metal and nonmetal mines	68276					A										
DOL-MSHA	Safety and health standards for construction work at all surface mines and surface areas of underground mines	68277							N								
DOL-OSHA	Chemical Warning Systems (chemical labeling)	68278															
DOL-OSHA	Generic standard for occupational exposure to pesticides during manufacture and formulation	68270															
DOL-OSHA	Regulation for reducing safety and health hazards in abrasive blasting operations	68280															
DOL-OSHA	Safety and health regulations for construction activities in tunnels and shafts	68282															
DOL-OSHA	Safety standard for walking and working surfaces in general industry	68283															
DOL-OSHA	Standard for occupational exposures to hexavalent chromium	68284															
DOT-FAA	Flammability standards for crewmember uniforms	68280															
DOT-FHWA	Certification of vehicle size and weight enforcement	68330															
DOT-FHWA	Design Standards for highways -- geometric design standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways	68340															

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

Data unknown--DOT is still evaluating alternative actions

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV '79	DEC '79	JAN '80	FEB '80	MAR '80	APR '80	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	1981
DOT-FHWA	Hours of service of drivers	68287							N								
DOT-FHWA	Interstate maintenance guidelines	68341			F												
DOT-FHWA	Minimum cab space dimensions	68288							N								
DOT-FHWA	Withdrawal of Interstate segments and substitution of alternative transportation projects	68342		N													
DOT-FRA	Alerting lights display -- locomotives	68288			F												
DOT-NHTSA	Fuel economy standards for model years 1982-85 light trucks	68234		N													
DOT-USCG	Construction and equipment for existing self-propelled vessels carrying bulk liquefied gases	68289								N							
DOT-USCG	Construction standards for the prevention of pollution from new tank barges due to accidental hull damage; and regulatory action to reduce pollution from existing tank barges due to accidental hull damage	68235								N							
TREAS-ATF	Advertising Regulations under the Federal Alcohol Administration Act	68323			N												
TREAS-ATF	Partial Ingredient Labeling of Wine, Distilled Spirits, and Malt Beverages	68324							F								
TREAS-ATF	Revision of the Distilled Spirits Tax System	68325															
TREAS-ATF	Unlawful Trade Practices under the Federal Alcohol Administration Act	68326							F								
EPA-OANR	Environmental Standard for Inactive Uranium Mill Tailings	68290								N							
EPA-OANR	Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Vehicles	68237			F												
EPA-OANR	Gaseous Emission Regulations for 1985 and Later Model Year Heavy-Duty Vehicles	68236															N

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV 79	DEC 79	JAN 80	FEB 80	MAR 80	APR 80	MAY 80	JUN 80	JUL 80	AUG 80	SEP 80	OCT 80	NOV 80	DEC 80	1981
EPA-OANR	Listing of coke oven emissions as a hazardous air pollutant and development of emission limitations	68238															
EPA-OANR	National emission standards for hazardous air pollutants - benzene	68239															
EPA-OANR	Noise Emission Standard for Newly Manufactured Motorcycles	68240															
EPA-OANR	Noise Emission Standard for Newly Manufactured Wheel and Crawler Tractors	68241															F 1982
EPA-OANR	Particulate Regulations for Light-Duty Diescl Vehicles	68242															
EPA-OANR	Policy and Procedures for Identifying, Assessing, and Regulating Air-borne Substances Posing a Risk of Cancer	68292															
EPA-OANR	Proposed Emission Regulations for 1983 and Later Model Year Light-Duty Trucks	68243															
EPA-OANR	Regulations for the Prevention of Significant Deterioration (PSD) resulting from hydrocarbons for carbon monoxide, nitrogen oxides, ozone and lead (PSD Set II)	68244															
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide (CO)	68245															
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter (PM)	68246															
EPA-OANR	Review of the National Ambient Air Quality Standards for Nitrogen Dioxide	68248															
EPA-OANR	Review of the National Ambient Air Quality Standards for sulfur dioxide	68247															
EPA-OANR	Standards of performance to control atmospheric emissions from industrial boilers	68248															

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV '79	DEC '79	JAN '80	FEB '80	MAR '80	APR '80	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	1981
EPA-OANR	Visibility Plan Requirements	68249	A														
EPA-OPFS	Pesticide Registration Guidelines	68294						F									
EPA-OPFS	Rules and notice forms for premanufacture Notification of New Chemical Substances	68294					F										
EPA-OPFS	Rules restricting the commercial and industrial use of asbestos fibers	68295						N									
EPA-OPFS	Standards and Rules for Testing of Chemical Substances and Mixtures	68297															
EPA-ORD	Fuels and Fuel Additives Registration	68250	N														
EPA-OWWM	Control of Organic Chemicals in Drinking Water	68298					N										
EPA-OWWM	Effluent Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants into Navigable Waterways	68251					N										
EPA-OWWM	Hazardous Waste Regulations: Core regulations to control hazardous solid waste from generation to final disposal	68299					F										
EEOC	Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained	68316							F								
GSA-NARS	Freedom of Information Act requests for national security classified information in the National Archives	68317		N													
NCUA	Organizing a Federal Credit Union	68259		F													
VA	Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance	68318					F										
CAB	Air Carrier Fitness	68343							F								
CAB	Air Carrier Insurance and Liability	68344			N												

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV 79	DEC 79	JAN 80	FEB 80	MAR 80	APR 80	MAY 80	JUN 80	JUL 80	AUG 80	SEP 80	OCT 80	NOV 80	DEC 80	1981
CAB	Essential Air Service Subsidy Guide-lines	68344		N													
CAB	Plain English for Airline/Passenger Contracts	68346		A													
CPSC	Consumer Products Containing Asbestos	68302				O											
CPSC	Omnidirectional Citizen Band Base Station Antenna Standard	68304															N 4/30/81
CPSC	Upholstered furniture cigarette flammability standard	68305		N													
FCC	Creation of New Personal Radio Service (PR Docket 79-140)	68346		O													
FCC	Deregulation of Competitive Domestic Telecommunications Market (CC Docket 79-252)	68347			O												
FCC	Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio De-regulation (BC Docket 79-219)	68348				O											
FERC	Procedures Governing Applications for Special Relief Under §§104, 106, and 109 of the Natural Gas Policy Act of 1978 (Docket No. RM79-67)	68252		F													
FERC	Regulations concerning sales of electric power between qualifying cogeneration and small power production facilities and electric utilities, and exemption of such facilities from regulation, under §§201 and 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA)	68253			F												
FERC	Regulations Governing Applications for Major Unconstructed Projects	68255				N											
FERC	Regulations to Implement the Second Stage of Incremental Pricing under the Natural Gas Policy Act	68256							F								
FERC	Valuation of Common Carrier Pipelines	68257															No date available at time of this publication
FHLBB	Monitoring Fair Lending Practices	68260		O													

A = ANPRM N = NPRM F = FINAL RULE Q = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV 79	DEC 79	JAN 80	FEB 80	MAR 80	APR 80	MAY 80	JUN 80	JUL 80	AUG 80	SEP 80	OCT 80	NOV 80	DEC 80	1981
FHLBB	Proposed Amendments on Outside Borrowing	68261		O													
FHLBB	Washington, D.C.-Md.-Va. SMSA Branching	68261															
FMC	Amendment to financial reports by common carriers by water in the domestic offshore trades	68349			F												
FMC	Amendments to tariff requirements for controlled carriers	68350	N														
FMC	Certification of company policies and efforts to combat rebating in the foreign commerce of the United States	68351						F									
FMC	Filing of agreements by common carriers and other persons subject to the Shipping Act of 1916	68352							F								
FMC	Revision of the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders"	68353			N												
FMC	Surcharges under dual-rate contracts on less than ninety days' notice	68353								F							
FTC	Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans	68328			N												
FTC	Mobile Homes Sales and Service Trade Regulation Rule	68330								O							
FTC	Proposed Trade Regulation Rule (TRR) on Standards and Certification (43 FR 57269, December 7, 1978)	68331								O							
FTC	Rulemaking on Children's Advertising	68334								O							
FTC	Trade Regulation Rule Concerning Credit Practices	68336								O							
ICC	Improvement of TOFC/COFC Regulation (Ex Parte No. 230 (Sub-No. 5))	68354			N												
ICC	Intercorporate Hauling (Ex Parte No. MC-122)	68356			F												

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

AGENCY	TITLE OF REGULATION	PAGE NO.	NOV '79	DEC '79	JAN '80	FEB '80	MAR '80	APR '80	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	1981
ICC	Western Coal Investigation -- Guide-lines for Railroad Rate Structure (Ex Parte No. 347)	68957									O						
NRC	Decommissioning and Site Reclamation of Uranium and Thorium Mills	68307						F									
NRC	Decommissioning of Nuclear Facilities	68307															N 1981
NRC	Disposal of High Level Radioactive Waste in Geologic Respositories	68309		A													
PRC	Postal Rate Commission Docket MC79-2 to consider a request of the U.S. Postal Service for the establishment of an Express Mail Metro Service subclass filed with the Commission on December 7, 1978	68358															
PRC	Postal Rate Commission Docket MC79-3, instituted by the Commission pursuant to 39 U.S.C. 53623(b), to hear evidence on the preferential treatment, commonly referred to as "red tag" treatment, afforded certain timevalue publications sent as secondclass mail	68360															

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## APPENDIX I: PUBLIC PARTICIPATION IN THE FEDERAL REGULATORY PROCESS

This appendix is a major new addition to the Calendar. The introduction to the appendix describes the general requirements for public participation in the Executive and Independent Agencies of the Federal Government. The appendix introduction briefly discusses procedures that establish the public's role in Federal regulation development. Specific information on the procedures for each agency follows, including:

- the name of each unit, if any, in the Agency that issues regulations;
- a brief description of the functions of the agency or department and its unique public participation activities;
- a description of any special funding available for public participation activities;
- a list of documents describing the public participation procedures in the agency; and
- the contact person who can provide further information.

We welcome suggestions to make future editions of this appendix more valuable.

This appendix provides "first step" guidance toward effective participation in the Federal regulatory process. It describes how the rulemaking process works; and it discusses other procedures at the Federal level that help to ensure that the public's interests are considered fairly in the final decisionmaking process.

The Regulatory Council hopes this information will help the general public to realize the importance of its role as government overseer and the value of public participation as a mechanism for: (1) creating positive dialogue that will increase agency accountability for justifying regulatory proposals, (2) developing new approaches to regulatory issues, (3) increasing the public's understanding of the agency's problems and options in evaluating regulatory solutions, and (4) ensuring that the system works for everyone.

Public participation at the Federal level is not new. Public and special interest groups existed before the turn of the century and influenced many present-day laws and policies, such as the development and enforcement of labor laws, anti-discrimination and civil rights laws, and voting rights and consumer protection laws. Agency leaders know that public participation not only provides them with a healthy perspective on issues to make informed and wise decisions, but also contributes to the efficiency of government. That

knowledge has motivated the implementation of procedures and practices that guarantee and protect the information flow from citizen to agency and back to the citizen.

Some basic definitions might be helpful here for notices to Federal regulatory proceedings:

(a) "Agency" means each and any authority of the Federal government and includes executive branch departments and agencies, independent agencies, and their components. (It does not include Congress or the courts.) The difference between executive branch agencies and independent agencies is not well defined. Executive branch agencies are headed by persons chosen by the President and serve at the pleasure of the President. Independent agencies are those whose heads are appointed by the President to chair the agency's commission or board for a specific length of time. There are specific limitations on the power of the President to remove the heads of these agencies. The board or commission sets certain regulatory policies for the agency and usually operates independently of the President.

(b) "Public" refers to any member of the U.S. populace, including business and industry and other regulated sectors.

(c) "Consumer" means any individual who uses, buys or acquires real or personal property, goods, services or credit for personal family or household purposes.

We have explained in the text other terms with which readers may not be familiar. The headings that follow are organized around the major provisions for public participation in Federal regulatory proceedings.

### The Administrative Procedure Act

The Administrative Procedure Act obligates agencies to follow certain specific procedures for agency development, issuance and enforcement of regulations. The Act establishes agency obligations for ensuring public participation in rulemaking, adjudication and other proceedings. It applies to both executive branch and independent regulatory agencies. The Act's definition of "public" includes regulated entities.

### Rulemaking

A rule is an agency statement on implementing, interpreting or enforcing a law or policy of the agency, or one that describes the agency's organization, procedure or practice. "Rule" also is used synonymously with "regulation." Rulemaking is the agency process for formulating, amending or repealing a

rule. It is also the agency's primary procedure for soliciting public comments on existing and proposed rules.

There are two types of rulemaking proceedings: formal and informal. Formal rulemakings occur only when a statute requires a rule to be made based on the results of an adjudicated public hearing, which means the hearing is presided over by some agency staff person and where agency and public witnesses present legal facts and arguments on the rule much like what happens in a civil court. Such statutes are rare, largely because they often entail relatively time-consuming and cumbersome trial-like procedures.

Informal rulemaking, on the other hand, is like the legislative process, in which an agency publishes a proposed rule and then develops a final rule based on an analysis of the merits of written public comments submitted to the agency oral presentations made at public hearings.

The advantage of rulemaking as opposed to case-by-case enforcement of a law is that the agency can formulate policy, obtain the views of the public and regulated sectors, and affect the behavior of a whole industry or other large sector of the economy in one proceeding at one time, giving fair notice to all affected interests.

Agency obligations for rulemaking as set forth in the Administrative Procedure Act are as follows:

1. The agency must publish a "Notice of Proposed Rulemaking" (NPRM) in the Federal Register to make the public aware of proposed rules being considered by the agency. The Federal Register is a daily government publication that announces all proposed and final Federal regulations. The Register may be impractical for home use because of its volume and subscription cost, but usually it is available at Federal depository libraries and at university libraries.

2. The Notice must include:

- the time, place and nature of the proceeding;
- reference to the legal authority under which the rule is being proposed;
- the terms of the proposed rule's substance or a description of the subject and issue involved.

3. The agency must allow interested persons the opportunity to participate in the proceeding by submitting written comments to the agency, with or without the opportunity for an oral presentation. Interested persons can use this opportunity during the public comment period.

### Making Public Comments

The public comment period gives the public the opportunity to oppose, applaud or suggest modifications in proposed rules.

Each agency may have its own specific requirements for acceptable public comments. Generally, agencies prefer that comments:

- be typed neatly;
- indicate the rulemaking proceeding that the comments address;
- include the writer's name, full address, and title and/or affiliation; and
- state clearly the arguments and information that the writer wishes to bring to the agency's attention.

When the comments reach the agency they are officially logged into the public record; and the reviewing staff analyzes the comments to determine whether any issues were raised that must be considered during the decisionmaking stage.

Interested persons should contact agencies directly for information on the opening and closing dates for comment periods on particular rulemakings, the address the comments should be sent to, and the number of required copies the agency wants you to submit. (Agency contacts you can call or write are listed in this appendix.)

4. When the agency finally issues the rule it must publish the rule in the Federal Register along with a statement about the rule's basis and purpose and a discussion of any significant issues raised in public comments.

5. The agency must publish substantive rules, i.e., non-procedural rules, at least 30 days before the rule becomes effective.

Rulemaking requirements do not apply to U.S. military or foreign affairs functions or agency matters related to personnel or public property, loans, grants, benefits or contracts. However, some agencies voluntarily apply the above requirements to those types of matters.

Neither do the requirements apply to rules stating a general agency policy, nor rules dealing with agency organization or procedure. Also excepted are situations where public participation is impracticable or unnecessary. When public participation is deemed unnecessary, the agency's reason for deciding so must be stated in the issued rule.

### Adjudication

Many council member agencies enforce regulatory policies and procedures by adjudicating regulatory requirements on a case-by-case basis,

and a few agencies rely primarily on adjudication to develop their regulatory policies. Adjudication leads to the formulation of an order, which is the agency's final disposition of a matter other than rulemaking. Such orders, or decisions or findings that make up the orders, must be based on evidence from agency hearing records related to the issue. Specialized agency employees called administrative law judges, who are independent from the rest of the agency, write the initial decision, which is reviewable by the agency head.

The Administrative Procedure Act requires that agencies provide timely public notice of an agency hearing to those persons entitled to participate in that hearing. That notice should include:

1. the time, place and nature of the hearing, all of which should reflect the convenience of the parties or their representatives;
2. the legal authority and jurisdiction under which the hearing is being held; and
3. the matters of fact and law asserted.

### Executive Order 12044

Executive Order 12044, signed by the President on March 23, 1978, establishes a system for agency management of their regulatory responsibilities. Executive departments and agencies are required to comply with the order, and the President asked that independent agencies voluntarily comply.

One of the Executive Order's goals is meaningful public participation in regulatory decisionmaking; and the Order builds upon the procedures for participation already created in the Administrative Procedure Act. The Executive Order recommends that agencies consider the following initiatives to provide early and meaningful opportunities for public participation in the development of regulations:

- (a) publishing an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public views before the agency actually proposes the regulation for public comment in an NPRM. Comments of an ANPRM can raise questions and considerations that help the agency decide whether to regulate and how;
- (b) sending notices to publications in addition to the Federal Register that are read by those affected by the proposed regulation;
- (c) notifying the affected parties directly; and/or
- (d) holding open conferences or public hearings.

Executive Order 12044 also requires agencies to publish semiannual agendas as a separate mechanism for facilitating

public participation. These agendas list all of the significant regulations that an agency has under development or scheduled for review. The lists also advise the public of the agency's regulatory action schedule, and thus ensure the earliest possible opportunity for public participation in rulemaking. At a minimum the agenda items identified as "major" by executive agencies are analyzed here in the Calendar of Federal Regulations.

The Order suggests that agencies give the public at least 60 days for public comment as opposed to the 30 days customarily allowed by agencies for comment on proposed regulations, and that the agencies should analyze and prepare a discussion of significant public comments before approving regulations.

To learn more about and to participate better in Federal regulatory proceedings, the public can take advantage of several provisions of: the Freedom of Information Act, the Federal Advisory Committee Act, the Government in the Sunshine Act, programs of financial assistance to participants in agency proceedings, and the Executive Order on Consumer Federal Programs.

### Freedom of Information Act (5 U.S.C. Section 552)

The Freedom of Information Act (FOIA), passed in 1967, requires each Federal agency to make "promptly available to any person records identified and requested in accordance with the procedures established by agency rules."

An agency can refuse to disclose a record in cases where the record falls within one or more of the exemptions contained in the Act that describe matters or materials that may be kept confidential.

FOIA questions can be difficult to answer, and space does not permit a detailed explanation of all of the relevant issues. The Department of Justice's Office of Information Law and Policy oversees FOIA matters. For more information you can contact them at:

Office of Information Law and Policy  
Department of Justice  
Main Justice Building  
Room 5259  
10th St. & Constitution Ave., N.W.  
Washington, D.C. 20530  
Phone (202) 633-2674

### Federal Advisory Committee Act (5 U.S.C. Appendix I)

The Federal Advisory Committee Act (FACA) lets the public know about meetings between agencies and outside groups. It also controls the number and

composition of advisory committees that agencies establish to assist them in their work. Section 10 of the Act requires open meetings and advanced public notice of all advisory committee meetings. Agencies may close such meetings only if the meeting agenda includes a subject that should be kept confidential under one or more of the exemptions of the "Sunshine Act," which is explained in the following section.

The General Services Administration's Committee Management Secretariat oversees FACA matters. For more information contact:

Committee Management Secretariat  
General Services Administration  
18th & F Sts., N.W.  
Washington, D.C. 20405  
Phone (202) 566-1642

#### The Sunshine Act

The Government in the Sunshine Act, referred to simply as the "Sunshine Act" and signed into law in 1976, opens various meetings to public observation in those agencies headed by a board or commission. The Act allows for public notice of all agency meetings and specifies the circumstances under which the agency may close meetings to the public or may withhold information from meeting notices. Meetings are closed to the public if the issues on the meeting agenda pertain to:

- (a) secret matters of national defense
- (b) agency personnel rules and practices
- (c) confidential commercial or financial information
- (d) criminal charges
- (e) personal privacy invasion
- (f) investigatory records for law enforcement purposes
- (g) supervision of financial institutions
- (h) previously disclosed agency actions and/or
- (i) agency participation in a civil court case

Interested members of the public should contact the agency for information about how to receive meeting notices, how to request that a closed meeting be opened, or where to review public records of agency meetings that are available for review.

#### Financial Assistance

Some agencies provide financial assistance to interest groups and individuals who can contribute substantially to a particular proceeding and who can prove a need for agency financial assistance.

Eligibility requirements and application procedures for financial assistance vary among the agencies that

make such assistance available. You should contact these agencies directly to obtain specific information about their financial assistance programs.

#### Executive Order on Federal Consumer Programs

On September 26, 1979, the President signed Executive Order 12160, "Providing for the Enhancement and Coordination of Federal Consumer Programs." It establishes a comprehensive Federal policy to guide all agencies in responding to consumer issues.

Agencies will publish programs for compliance with the Executive Order in the Federal Register for public comment early in December 1979.

#### AGENCY PUBLIC PARTICIPATION ACTIVITIES

The 36 Regulatory Council agencies each submitted general information on their public participation programs—and in particular on those procedures that differ from or supplement the government-wide practice described above. What follows is a summary of that information, a brief sketch of the role of the agency itself, and a list of documents that provide more details about the agency's public participation activities. The Regulatory Council encourages your interest and involvement.

#### Administrative Conference of the United States (ACUS)

##### Units That Issue Regulations

The Administrative Conference has no regulatory responsibilities. The only regulations it issues pertain to its organizational duties found at 1 C.F.R. parts 301-304. The formal work product of the Conference is reflected in Recommendations and Statements concerning administrative practice and procedure, codified at 1 C.F.R. parts 305 and 310.

##### Functions

The Administrative Conference is an independent agency established to study procedural problems arising in the operation of federal agencies and programs and to make recommendations for improvement to the agencies, the President, Congress and the courts. The Office of the Chairman provides advisory and consultative assistance to the government and the public.

##### Public Participation Funding

The Administrative Conference's activities are all open to the public and ACUS enthusiastically solicits public participation; however, none of its activities require funding of participants.

#### Public Participation Documents

"An Interpretive Guide to the Government in the Sunshine Act." (Limited quantities are available from the librarian in the Office of the Chairman.)

The continuing series of recommendations and reports on administrative procedure is also available from the librarian in the Office of the Chairman. There is normally no charge for such documents if an adequate supply is on hand.

#### Information Contact

For information on general public participation procedures or for publications requests:

Jeffrey S. Lubbers  
Senior Staff Attorney  
Administrative Conference of the  
United States

Suite 500  
2120 L Street, N.W.  
Washington, D.C. 20037  
Phone: (202) 254-7020 or

Sue Boley  
Librarian  
Administrative Conference of the  
United States

Suite 500  
2120 L Street, N.W.  
Washington, D.C. 20037

ACUS maintains a mailing list for its annual reports and occasional newsletters. Contact either of the persons listed above.

#### Department of Agriculture (USDA)

##### Units That Issue Regulations

Agricultural Marketing Service  
Agricultural Stabilization and  
Conservation Service  
Animal and Plant Health Inspection  
Service  
Farmers Home Administration  
Federal Crop Insurance Corporation  
Federal Grain Inspection Service  
Food and Nutrition Service  
Food Safety and Quality Service  
Foreign Agricultural Service  
Forest Service  
Office of the General Sales Manager  
Rural Electrification Administration  
Safety and Health  
Soil Conservation Service

##### Functions

USDA establishes national policy regarding the nation's production, distribution and consumption of agricultural commodities, foodstuffs and forest resources, as well as national policy governing the use of agricultural commodities or services for personal or household purposes.

The majority of rulemakings at USDA are informal, or notice and comment

actions. Each of the administrative units named above solicits public comments on policy issues under consideration.

The exception is the formal rulemaking process required for commodity marketing orders administered by the Agricultural Marketing Service (AMS). Before holding an evidentiary hearing AMS performs a prenotice investigation, reviewing public comments framing the issues that must be covered in developing an adequate decision. Following the public hearing and analysis of the record a recommended decision is issued, subject to comment and the filing of exemptions. AMS' final decision is put to a referendum by the regulated producers that the final order will affect.

Each USDA unit listed above has a public participation contact. The primary information contact listed below under "Information Contact" can refer you to the appropriate person.

#### Public Participation Funding

In March, 1979, USDA proposed regulations to govern reimbursement to selected groups and individuals who participate in agency rulemaking proceedings. While the agency head responsible for the particular proceeding decides whether funds are available, an independent Department-level Evaluation Board makes the final decision on funding. The issuance of final regulations is in the process of clearance.

#### Public Participation Documents

None.

#### Information Contact

In addition to the normal educational and informational responsibilities, USDA's public participation office monitors the adequacy of the opportunity for the public to participate in all agency proceedings. For further information contact:

Elizabeth A. Webber  
Director of Public Participation  
Department of Agriculture  
Room 119-A  
Washington, D.C. 20250  
Phone (202) 447-2113

#### Department of Commerce (DOC)

##### Units That Issue Regulations

Bureau of Census  
Bureau of Economic Analysis  
Economic Development Administration  
Industry and Trade Administration  
Maritime Administration  
Minority Business Development Agency  
National Bureau of Standards  
National Oceanic and Atmospheric Administration

#### National Technical Information Service National Telecommunications and Information Administration Patent and Trademark Office Functions

The principal mission of the Department is to foster, promote and develop the foreign and domestic concerns of the United States. The activities of the components of the Department in furthering the mission are broad and varied in scope and cover such diverse areas as: patents, assistance to minority business and economically depressed areas, tourism, weather, ocean and atmospheric programs, standards development, promotion of domestic and international trade, the censuses, statistical and economic data and analyses; ship subsidies and telecommunications policy.

The departmental units each have different procedures for developing and promulgating regulations, including public notification and participation. These procedures were published in the Federal Register on January 9, 1979, as a Department administrative order (44 FR 2082). The administrative order, entitled "Issuing Departmental Regulations," implements Executive Order 12044, "Improving Government Regulations."

#### Public Participation Funding

In response to President Carter's May 16 memorandum to Executive Branch agencies and departments on funding public participation, DOC is reviewing the need and scope of its agencies providing such assistance. Currently, DOC's National Oceanic and Atmospheric Administration (NOAA) is the only departmental unit that has such a program. NOAA provides compensation for certain fees and costs of public participation in its proceedings that involve a public hearing. Applicants for these funds must demonstrate that they (1) represent an interest that can contribute to a fair determination of the proceeding, and (2) do not have sufficient resources to participate otherwise. The requirements and procedures for applying for these funds have been published in the Code of Federal Regulations (15 CFR Part 904).

You can obtain more information on public participation funding by NOAA from the contact person listed under "Information Contact."

#### Public Participation Documents

The Department of Commerce (DOC) currently has no books or pamphlets on public participation, except for its administrative order on "Issuing Departmental Regulations."

However, DOC's Office of Consumer Affairs (OCA) is developing a consumer program in response to Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Programs." A draft of the program will be published in the Federal Register for public comment during the week of December 3. One element of the program will be the development of informational materials for consumers.

#### Information Contact

Meredith M. Fernstrom, Director  
Office of Consumer Affairs  
Department of Commerce, Room 5889  
Washington, D.C. 20230  
Phone: (202) 377-5001

For information on public participation funding contact:

Michael Levitt  
National Oceanic and Atmospheric  
Administration  
Office of the General Counsel  
Department of Commerce  
Main Commerce Bldg., Rm. 5814  
Washington, D.C. 20230  
Phone (202) 377-4080

#### Department of Energy (DOE)

##### Units That Issue Regulations

Conservation and Solar Applications  
Economic Regulatory Administration  
Resource Applications

#### Functions

The President established DOE in 1977 to consolidate the major energy programs scattered throughout the government into a unified agency that could provide a national energy policy. DOE has played a major role in developing regulatory initiatives for energy policy, including a program for solar energy, plans for gasoline rationing, a program for phased decontrol of crude oil, and a program for import reduction.

DOE responded to Executive Order 12044 with an agency Order making certain public participation procedures mandatory. Some of these procedures include:

- Notification of interested parties, the Governor of each state, DOE regional representatives, and appropriate Federal advisory committees;
- Distribution of appropriate notices or press releases describing the regulatory action to trade journals, newspapers, and newsletters read by interested parties;
- Public hearings and conferences with interested groups and individuals (with adequate advance notification), where appropriate; and
- Provision for one or more public hearings, preceded by at least 14 days

notification, for all significant regulations proposed.

In addition, the Department conducts citizen participation workshops. It is the responsibility of each program area to conduct those workshops that pertain to their particular program area.

When the Department solicits public comments, it requires full, verbatim transcripts for all public hearings. These transcripts are used in all proceedings where citizens comment for the official records. Our Office of Consumer Affairs publishes public comments in some issues of the "The Energy Consumer."

The Office of Consumer Affairs has the primary responsibility for managing and coordinating the public participation efforts of the Department. However, DOE program areas are directly accountable for regular and substantive public participation programs.

#### Public Participation Funding

DOE is prohibited by Congress from providing funding for public participation. Therefore, no funding is available.

#### Public Participation Documents.

All the following documents are available from the Office of Consumer Affairs:

- "Citizen Participation Manual"
- "Semi-Annual Regulatory Agency"
- "DOE Order 2030.1"
- "The Energy Consumer"

#### Information Contact

The Office of Consumer Affairs maintains a mailing list for distribution. In addition, citizens with specific interests can have their names placed on specialized mailing lists. The Technical Information Center at Oak Ridge, Tennessee, also has a mailing list for its "Energy Meetings" bulletin. For more information contact:

Bill Holmberg  
 Director, Citizen Participation  
 Office of Consumer Affairs  
 Department of Energy  
 Forrestal Bldg., Rm. 7B-198  
 1000 Independence Ave., S.W.  
 Washington, D.C. 20585  
 (202) 252-5877

Hotline Numbers: For problems with getting gasoline or heating oil, or to report excessive dealer prices: (800) 424-9246. In the Washington, D.C., area call (202) 254-9246.

For questions and comments on alcohol fuel technology call: (800) 535-2840. In Louisiana call (800) 353-2870.

## Department of Health, Education, and Welfare (HEW)

### Units That Issue Regulations

Assistant Secretary for Education  
 Assistant Secretary for Human Development Services  
 Health Care Financing Administration  
 Office of Child Support Enforcement  
 Office of the Inspector General  
 Office of the Secretary  
 Social Security Administration  
 U.S. Public Health Service

### Functions

HEW is the domestic funding agency for 300 programs that focus on assistance to the economically disadvantaged, Social Security retirement, educational opportunity and social service. The agency also regulates standards for food and drug safety and performs basic and applied research in health and education.

HEW frequently publishes an advance notice of proposed rulemaking (ANPRM) to allow the earliest possible public participation in agency rule proposals. The Department also frequently holds regional hearings and meetings to obtain public input in decisionmaking activities. For new education regulations, public meetings are being held at the times and places most convenient for those affected by the regulations. Accommodation will be made to allow certain groups to participate in the meetings that might not be able to otherwise.

A pilot program of service desks will be opened in four regions to answer questions from manufacturers about FDA regulations. The desks, located in East Orange, New Jersey; Chicago, Illinois; Atlanta, Georgia; and Santa Ana, California, will respond to questions dealing with problems such as how to fill out applications and other government forms, what regulations must be followed to market a new product, and how FDA regulations affect manufacturers' products or manufacturing processes.

Finally, in response to the President's specific concern about the impact of Federal regulations on small businesses, the Food and Drug Administration is attempting to give special assistance to small businesses in their attempt to decipher the various government regulations with which they must comply. The FDA will begin two initiatives into the simplification of regulations. FDA also will be appointing an official to the Commissioner's staff to "help assure a consistent agency-wide policy for small business."

## Public Participation Funding

HEW is currently developing a proposed regulation that will allow for compensation to the public for participation in the regulations development process. The Food and Drug Administration (FDA) published a final regulation on public participation funding in the October 12, 1979 Federal Register. The name and address of the FDA contact person is listed below under "Information Contact."

### Public Participation Documents

None available at this time.

However HEW's regulatory agenda provides important information that may lead to increased public participation. This document exceeds the requirements of Executive Order 12044 by identifying not only "significant" regulations but all regulations under development or consideration at the Department. Over 400 regulations are presented in each agenda. The Department's next agenda will be published on December 14, 1979.

### Information Contact

The Department-wide contact person for public participation activities is:  
 Lee Feldman, Deputy Director  
 Regional and Outreach Division  
 Office of Public Affairs  
 Department of Health, Education and Welfare  
 200 Independence Avenue, S.W.  
 Washington, D.C. 20201  
 Telephone: (202) 245-6637

For information on proposed regulations currently being drafted for compensation of citizen participation contact:

Steven Cole  
 Acting Deputy General Counsel  
 Office of General Counsel  
 Department of Health, Education and Welfare  
 200 Independence Avenue, S.W.  
 Washington, D.C. 20201  
 Telephone: (202) 245-6733 or  
 Glenn Kamber, Director  
 Regulations Management Unit  
 Department of Health, Education and Welfare  
 200 Independence Avenue, S.W.  
 Washington, D.C. 20201  
 Telephone: (202) 245-3161

For information on FDA public participation funding contact:

Alex Grant, Special Assistant to the  
 Commissioner on Consumer Affairs  
 Food and Drug Administration  
 Room 1685, HF-7  
 5600 Fishers Lane  
 Rockville, Maryland 20857  
 Telephone: (301) 443-5004

**Department of Housing and Urban Development (HUD)**

**Units That Issue Regulations**

Community Planning and Development  
Fair Housing and Equal Opportunity  
Government National Mortgage Association  
Housing  
Neighborhoods, Voluntary Associations and Consumer Protection  
New Community Development Corporation

**Functions**

HUD's national goal is to ensure that the basic rights of all consumers are considered, respected and protected in all the agency's housing and community development activities. The agency hopes to achieve this goal through promoting viable communities, providing decent housing, achieving equal opportunity and effectively coping with natural disasters.

HUD has implemented several of the Administration's recommendations for extended public participation, including publishing advance notices of proposed rulemaking (ANPRM), extending public comment periods to 60 days, holding public hearings on proposed regulatory changes, and announcing regulatory changes in publications oriented toward special interest groups. HUD's mailing list numbers about 78,000 individuals.

**Public Participation Funding**

No funding available at this time.

**Public Participation Documents**

None available at this time.

**Information Contact**

Father Geno Baroni  
Assistant Secretary for Consumer Affairs and Regulatory Functions  
Department of Housing and Urban Development  
Office of Public Affairs  
7th & D Streets, S.W.  
Room 4100  
Washington, D.C. 20410  
Phone: (202) 755-0950

**Department of the Interior (DOI)**

**Units That Issue Regulations**

Bureau of Indian Affairs  
Bureau of Land Management  
Bureau of Mines  
Bureau of Reclamation  
Fish and Wildlife Service  
Geological Survey  
Heritage Conservation and Recreation Service  
National Park Service  
Office of Minerals Policy and Research Analysis

Office of Surface Mining and Enforcement  
Office of Water Research and Technology

**Functions**

The Department of the Interior manages some 450 million acres of public land, or 20 percent of the nation's total land base. The Department also protects endangered species of fish and wildlife, monitors surface mined land reclamation, administers programs for the nationwide inventory, study and management of water, lands, minerals, and fish and wildlife resources; administers, protects and interprets natural archeological, historic, and other cultural and recreation areas of national significance; and plans, constructs and maintains water resource facilities in Western States. In addition, DOI implements the Federal trust responsibility for Alaska Natives and Native American tribes, bands and communities; and provides program services, and advocacy/coordination with the programs of other government agencies for those groups. The Department also has oversight responsibilities in U.S. territorial affairs.

DOI as a whole uses a wide variety of public participation techniques, including workshops, public hearings, regional meetings, distribution of draft rules, press releases, etc. Each unit that issues regulations has an individual outreach plan especially geared toward the public's interest in that unit's activities.

**Public Participation Funding**

None.

**Public Participation Documents**

Departmental Manual Chapter, "Public Participation in Decision-Making" (Part 301, Departmental chapter 2, DM2) is available from the Office of the Assistant Secretary for Policy, Budget and Administration listed below.

**Information Contact**

Ms. Cecil Hoffman  
Special Assistant to the Assistant Secretary for Policy, Budget, and Administration and Public Participation Coordination Officer  
U.S. Department of the Interior  
18th and C Streets, N.W.  
Washington, D.C. 20240  
Phone: (202) 343-5106 or  
Chris Carlson, Assistant to the Secretary and Director of Public Affairs  
U.S. Department of the Interior  
18th and C Streets, N.W.  
Washington, D.C. 20240

Phone: (202) 343-8331

**Department of Justice (DOJ)**

**Units That Issue Regulations**

Antitrust Division  
Bureau of Prisons  
Civil Rights Division  
Criminal Division  
Drug Enforcement Administration  
Immigration and Naturalization Service  
Federal Bureau of Investigation  
U.S. Parole Commission

**Functions**

The DOJ enforces criminal laws and laws against subversion, ensures healthy business competition, safeguards the consumer, and enforces drug, immigration and naturalization laws. The DOJ also plays a significant role in crime prevention, crime detection, and rehabilitation of offenders. In addition, the Department represents the United States in the Supreme Court and generally renders legal advice and opinions upon request to the President and heads of executive departments.

Within the DOJ, none of the divisions or components that engage in regulatory activity operates under formalized public participation procedures.

As a law enforcement agency, the DOJ does not engage in much informal rulemaking activity and, therefore, has not centralized the function of providing information about public participation in such activity. However, pursuant to Attorney General Order No. 831-79, May 25, 1979, the Associate Attorney General and the Deputy Attorney General exercise oversight over components' regulatory agenda with administrative support from the Office of the Administrative Counsel, Justice Management Division.

**Public Participation Funding**

DOJ is not authorized to fund public participation activities.

**Public Participation Documents**

None.

**Information Contact**

For referral to a knowledgeable official on the agency's regulatory agenda and any related public activity in the appropriate DOJ component contact:

William Snider, Administrative Counsel  
Justice Management Division  
U.S. Department of Justice  
Washington, D.C. 20530  
Phone (202) 622-3452

The Department maintains general public information mailing lists. Any

person who wishes to have his or her name included may contact:  
 Sandy Smith  
 Office of Public Affairs  
 U.S. Department of Justice  
 Room 5114  
 Washington, D.C. 20530  
 Phone (202) 633-2014

**Department of Labor (DOL)**

**Units That Issue Regulations**

Bureau of International Labor Affairs  
 Bureau of Labor Statistics  
 Employment and Training Administration  
 Employment Standards Administration  
 Labor-Management Service Administration  
 Mine Safety and Health Administration  
 Occupational Safety and Health Administration

**Functions**

DOL is primarily concerned with the quality of work-life in America and with the worker/employer-job relationship, including working conditions, pay, job and pay discrimination, job training, collective bargaining, workers compensation and unemployment insurance. In addition, DOL administers the Labor Management Reporting and Disclosure Act and works with the Internal Revenue Service to administer the Employee Retirement Income Security Act of 1974.

DOL develops a public participation plan for each significant rule proposed. Each of the administrative units named above has designated a consumer representative to handle inquiries and complaints; and the Special Assistant to the Secretary for Consumer Affairs coordinates public participation for all the units and the outreach activities of DOL's regional offices.

MSHA and OSHA use advisory committees set up on an ad hoc basis to determine the need for regulatory action as well as the content of a needed regulation. Any member of the public may request an informal public hearing in connection with the development of the regulation. MSHA and OSHA also are authorized to implement temporary standards under action circumstances.

**Public Participation Funding**

None.

**Public Participation Documents**

None.

**Information Contact**

For general information or referral to the consumer representative for any administrative unit name above, contact:

John Leslie, Special Assistant to the Secretary for Consumer Affairs  
 Department of Labor  
 3rd St. and Constitution Ave., N.W.  
 Room 1032 South  
 Washington, D.C. 20210  
 Telephone: (202) 523-7304

**Department of Transportation (DOT)**

**Units That Issue Regulations**

Federal Aviation Administration  
 Federal Highway Administration  
 Federal Railway Administration  
 National Highway Traffic Safety Administration  
 Office of the Secretary  
 Research and Special Projects Administration  
 St. Lawrence Seaway Development Corporation  
 U.S. Coast Guard  
 Urban Mass Transportation Administration

**Functions**

DOT fosters the development and maintenance of safe, effective transportation systems to move people and goods. Each administrative unit named above has separate activities to reach the public depending upon the nature of ongoing proceedings. DOT's Office of Consumer Affairs coordinates the public and participation activities of all the administrative units.

An appendix to the Department's semi-annual regulatory agenda contains information on how interested persons may include their names on the Agency's general mailing list to receive documents issued within the Department.

The Office of Consumer Affairs publishes a newsletter of general public interest. To receive the newsletter, call or write the person listed below under "Information Contact."

**Public Participation Funding**

DOT's National Highway Traffic Safety Administration (NHTSA) is operating a demonstration program for certain of its rulemaking proceedings that provides financial assistance to individuals and groups who otherwise would be unable to participate effectively in NHTSA proceedings.

See the following section for the information contact person on this program.

**Public Participation Documents**

The "Transportation Consumer Newsletter" and "How to Participate in NHTSA's Public Participation Program" are available from DOT's Office of Consumer Participation. (See "Information Contact" below.)

Also, Department of Transportation Regulatory Policies and Procedures," 44 FR 11034, Monday, February 26, 1979.

**Information Contact**

Contact the following office for information on any DOT activity:

Office of Consumer Affairs  
 Department of Transportation  
 400 Seventh Street, S.W.  
 Room 904  
 Washington, D.C. 20509  
 Phone (202) 275-4166

For information on NHTSA's public participation funding contact:

Ann Mitchell  
 NHTSA  
 Office of Consumer Participation  
 Department of Transportation  
 400 Seventh Street, S.W.  
 Room 5232  
 Washington, D.C. 20590  
 (202) 426-9550

**Department of the Treasury**

**Units That Issue Regulations**

Bureau of Alcohol, Tobacco and Firearms  
 Bureau of Government Financial Operations  
 Bureau of Public Debt  
 Comptroller of the Currency  
 Internal Revenue Service  
 Office of Revenue Sharing  
 Office of the Secretary  
 U.S. Customs Service  
 U.S. Savings Bonds Division  
 U.S. Secret Service

**Functions**

The Department of the Treasury collects disburses and ensures the integrity of government revenues.

The Department has the following unique public participation and outreach activities:

- Agenda of pending regulations released on a monthly basis by IRS. The Bureau of National Affairs reprints and circulates it to subscribers.
- Direct distribution of regulatory documents issued by the Comptroller of the Currency to all national banks.
- Publication of all Customs NPRMs and Final Rules in the *Customs Bulletin* which is mailed to any individual expressing an interest in Customs regulatory activities.
- Public speaking by Treasury officials on Treasury regulatory activities.
- Public hearings scheduled by IRS if even one party so requests. Public hearings held in cities outside of Washington by AT&F, with evening hearing times available upon request.

**Public Participation Documents**

No general materials available. For information on specific regulatory activities write or call the "Information Contact" listed below.

**Public Participation Funding**

None available.

**Information Contact**

Mr. Steven L. Skancke  
Deputy Executive Secretary  
Department of the Treasury  
Room 3408, Main Treasury  
Washington, D.C. 20220  
Telephone: (202) 566-2269

Individuals interested in adding their names to the general public information mailing list may do so by writing to the agency's deputy executive secretary listed above.

**Equal Employment Opportunity Commission (EEOC)**

**Units That Issue Regulations**

**Field Services**

Office of Policy Implementation  
Systemic Programs

Each commissioner also may issue regulations with the approval of the majority of the full Commission.

**Functions**

EEOC's primary responsibility is to enforce Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex or national origin. In addition, the agency recently assumed jurisdiction over the Equal Pay Act and the Age Discrimination in Employment Act.

EEOC involves affected Federal agencies, state and local governments, business, labor unions, public interest organizations, civil rights groups and various individuals early in the process of developing proposed regulations. The EEOC's outreach plan is a very extensive one and includes holding public conferences and hearings, sending press releases and notices to special interest publications and publishing an advance notice of proposed rulemaking to allow public comments at the earliest rule development stage.

**Public Participation Funding**

None.

**Public Participation Documents**

None.

**Information Contact**

Karen Danart, Deputy Director  
Office of Policy Implementation  
2401 E Street, N.W.

Washington, D.C. 20506  
Telephone: (202) 634-7060

**Environmental Protection Agency (EPA)**

**Units That Issue Regulations**

Office of Air, Noise and Radiation  
Office of Enforcement  
Office of Planning and Management  
Office of Research and Development  
Office of Toxic Substances  
Office of Water and Waste Management

**Functions**

The President created EPA in 1970 to administer environmental laws, conduct research and demonstration projects, establish and enforce standards, monitor pollution in the environment and assist state and local governments in their efforts to restore and protect the environment. EPA's regulatory responsibilities are in the areas of air, water, toxics, pesticides and solid waste management programs.

The agency develops an individual outreach plan for most proposed regulations. The agency develops a special contact list, publishes an advance notice of proposed rulemaking, provides informal open meetings and workshops to explore regulatory issues, and then develops a summary of public viewpoints and preferences for inclusion into the final decisionmaking process. EPA also provides feedback on the outcome of public involvement to all those who participated.

There is no required format for submitting a rulemaking petition; and multiple copies of public comments are not required, except in special cases to expedite agency review of comments.

**Public Participation Funding**

EPA is developing a pilot program to compensate selected participants for their participation in specific forthcoming rulemakings, including rules issued under the Clean Air Act, the Clean Water Act and the Toxic Substances Control Act. The general qualifications would be that:

- (1) the participant would be unable to participate effectively without agency compensation, and
- (2) the participant could make a useful contribution to a full and fair assessment of the issues involved.

Those individuals and groups participating in rulemaking proceedings regarding the control of hazardous chemical substances and mixtures not only must meet the above two requirements but also must have little economic interest in the outcome of the proceeding.

**Public Participation Documents**

"Public Participation in Solid Waste Management—Interim Guidelines"  
"The Water Program Public Participation Policy"

EPA also has published numerous other books and pamphlets on several significant regulations and on various of its programs. All documents are free. Contact the Office of Public Awareness listed below.

**Information Contact**

Sharon Francis, Special Assistant to the Administrator for Public Participation  
Environmental Protection Agency  
401 M Street, S.W.  
Room 1227 West Tower  
(A-100)  
Washington, D.C. 20460  
Phone: (202) 245-3066

To receive copies of agency publications call or write:

Joan Martin Nicholson, Director  
Office of Public Awareness  
Environmental Protection Agency  
401 M Street, S.W.  
Room 311 West Tower  
(A-107)  
Washington, D.C. 20460

Telephone: (202) 755-0700 or James Keys

Public Information Center  
Environmental Protection Agency  
401 M Street, S.W.  
Lobby West Tower  
(PM-215)

Washington, D.C. 20460  
Telephone: (202) 755-0707

To have your name included on the agency's mailing list call or write:

Paul H. Wyche, Jr.  
Constituent Coordinator  
Environmental Protection Agency  
401 M Street, S.W.  
Room 355 West Tower  
(A-107)  
Washington, D.C. 20460  
Telephone: (202) 755-0132

**General Services Administration (GSA)**

**Units That Issue Regulations**

Automated Data and Telecommunications Service  
Executive Committee on the Federal Register  
Federal Property Resources Service  
Federal Supply Service  
Information Security and Oversight Office  
National Archives and Records Service  
Office of Acquisition Policy  
Office of General Counsel  
Office of Human Resources and Organization  
Public Archives and Records Service  
Regulatory Law Division

## Transportation and Public Utilities Service

### Functions

GSA is the Federal Government's business manager. GSA's regulations establish other agencies' procedures on matters such as managing Federal property and records, constructing and operating buildings, obtaining and distributing supplies, using and disposing of property, managing transportation, traffic and communications; stockpiling strategic materials and managing the Government's automatic data processing resources program. While GSA is not a major regulatory agency, when agencies apply GSA regulations, the rules do have an effect on the public, for example, the rule on smoking in public buildings.

Depending on the nature and interest of the target audience, each of GSA's proposed regulations follow one or more of these outreach techniques: publishing an advance notice of proposed rulemaking, holding open conferences or public meetings, sending notices of proposals to special interest publications, or notifying interested parties directly. These procedures do not apply in cases of national security classified rules, Federal procurement regulations, Federal requisition regulations and GSA procurement regulations.

### Public Participation Funding

None.

### Public Participation Documents

None at the present time.

### Information Contact

For general information about regulations being developed call or write:

Anthony Artigliere, Chief  
Directives Management Branch  
General Services Administration  
18th and F Streets, N.W.  
Washington, D.C. 20405  
Phone: (202) 566-0866

For information on public participation in general:

David F. Peterson  
Director of Consumer Affairs  
General Services Administration  
18th and F Streets, N.W.  
Room G-142  
Washington, D.C. 20405  
Phone: (202) 556-1794

Non-profit consumer organizations can enter their names on a special mailing list by contacting:

Teresa Nasif  
Consumer Information Center  
General Services Administration

18th and F Streets, N.W.  
Room G-142  
Washington, D.C. 20405  
Phone: (202) 556-1794  
GSA Hotline for reporting fraud or violations:

(800) 566-1780

(202) 424-5210—Washington, D.C. metro area only.

Or Write:

GSA Hotline

P.O. Box 28341

Washington, D.C. 20005

Dial-A-Reg: Call the following numbers in the city nearest you for information on selected documents scheduled for publication in the next day's Federal Register:

(202) 523-5022—Washington, D.C.

(312) 663-0884—Chicago, Illinois.

(213) 688-6694—Los Angeles,

California.

## National Credit Union Administration (NCUA)

### Units That Issue Regulations

All regulations are issued by the NCUA Board.

### Functions

NCUA is responsible for chartering, regulating, and supervising Federal Credit Unions. The agency is also responsible for administering the National Credit Union Share Insurance Fund, which insures the share (savings) accounts of the members of all Federally-chartered credit unions and select state chartered credit unions. The NCUA board also serves as the board of directors of the National Credit Union Administration Central Liquidity Facility, which is a mixed ownership government corporation created to provide funds to meet the liquidity needs of credit unions.

### Public Participation Funding

No funding is available at this time.

### Public Participation Documents

NCUA final report "In response to Executive Order 12044: Improving Government Regulations" 44 FR 17954, March 23, 1979.

### Information Contact

Robert S. Monheit  
Senior Attorney and Regulatory  
Development Coordinator  
Office of General Counsel  
National Credit Union Administration  
2025 M Street, N.W.  
Washington, D.C. 20456  
Telephone: (202) 632-4870

## Small Business Administration (SBA)

### Units That Issue Regulations

All regulations are issued under the signature of the agency Administrator.

### Functions

The Small Business Administration was created by Congress in 1953 to assist, counsel and assure the success of the small business community in a competitive free-enterprise economy. The agency provides the small business community with financial assistance, management training and counseling, and help in getting a fair share of Government contracts through over 100 offices in all parts of the nation. SBA also serves as small business' chief advocate in the Federal Government and administers the Government's home, personal property and business Disaster Loan Recovery Program.

SBA does not favor the Administrative Procedure Act's exemption of regulations concerning grants, loans and other forms of financial assistance from normal public participation procedures; and notices on these matters also go out to the general public for comments. Otherwise, the agency's procedures are in keeping with the spirit of Executive Order 12044.

### Public Participation Funding

None.

### Public Participation Documents

The SBA's regulations dealing with public participation in rulemaking can be found at 13 CFR 101.9. Copies may be obtained by calling or writing the "Information Contact" listed below.

### Information Contact

For general information on the preparation of regulations and policy, the promulgation of rules or public participation procedures contact:

George M. Grant, Jr., Associate  
General Counsel for Legislation  
Small Business Administration  
1441 L Street, N.W.  
Room 700  
Washington, D.C. 20416  
Phone (202) 653-6662

Address general inquiries or other questions on receiving any of the agency's various publications on business assistance programs call or write the SBA regional, district or branch office located near you. Consult your local telephone directory for the address and phone number.

## United States International Trade Commission (USITC)

### Units That Issue Regulations

The Office of the General Counsel at the Commission is responsible for recommending the adoption of regulations by the Commission, recommending rulemaking proceedings, and preparing notices for rulemaking proceedings.

### Functions

The Commission is an independent agency created to provide the Congress and the Executive Branch with expert advice on matters related to U.S. foreign trade. In addition to the general advisory responsibilities, the Commission conducts many investigations related to the impact of imported products on the domestic markets of U.S. producers.

### Public Participation Funding

None.

### Public Participation Documents

"Summary of Statutory Provisions Related to Import Relief" (Publication No. 842, June 1978), summarizes the statutory provisions for agency investigations of the impact of imports in domestic product markets. It is available from the Office of the Secretary.

A brochure that generally describes the agency is now dated, but a new edition will be available soon.

### Information Contact

Mr. Hal Sundstrom  
Assistant Secretary and Public Information Officer  
Office of the Secretary  
U.S. International Trade Commission  
701 E Street, N.W.  
Washington, D.C. 20436  
Phone: (202) 523-0161

This agency has a general public mailing list. Address requests to be added to the mailing list to the Office of the Secretary.

## Veterans Administration (VA)

### Units That Issue Regulations

Department of Medicine and Surgery  
Department of Veterans Benefits  
National Cemetery Systems

Other units can on occasion issue internal regulations, that is, for adherence by the agency only.

### Functions

The VA provides services to veterans and their dependents through a variety of programs including compensation, pension, education, vocational

rehabilitation, insurance, home loans, burial, and health care and hospitalization.

The VA works closely with community organizations and knowledgeable individuals involved in veterans' interests in reviewing its regulations and procedures to determine program responsiveness to consumers' needs. VA hospitals and regional offices provide many services and disseminate information at the local level, where consumer involvement is particularly visible.

Also, the VA sends copies of proposed regulations to the U.S. House and Senate Veterans Affairs Committees, to veterans organizations and other interested parties. The VA encourages the public to submit written comments on the agency's regulatory activities. There are no formal requirements for submitting these comments, and the comment period on all rulemaking proceedings is 60 days.

### Public Participation Funding

None.

### Public Participation Documents

None.

### Information Contact

Office of Consumer Affairs  
Veterans Administration  
810 Vermont Avenue, N.W.  
Washington, D.C. 20420  
(202) 389-2843

## Civil Aeronautics Board (CAB)

### Functions

The CAB is responsible for economic regulation of air transportation and for overseeing the transition to a deregulated air transportation system.

Private and public interest groups who petition CAB for rulemaking must file an original and 19 copies of the petition with CAB's Docket Section. Respondents to the petition should also file an original and 19 copies. Individuals may file their comments as consumers without filing multiple copies.

### Public Participation Funding

The CAB has a program for reimbursing certain persons participating in all types of proceedings, including rulemaking. The primary eligibility criteria are (1) the applicant must be expected to contribute substantially to a full and fair resolution of the proceeding; (2) the applicant must be unable to afford to participate without funding; and (3) the applicant's interest in the outcome of the proceeding

must be small compared to the burden of participation.

The criteria and procedures for this program are set out in 14 CFR Part 305 (adopted at 43 FR 56878; December 5, 1978).

### Public Participation Documents

CAB's available documents describe the agency's public participation funding program:

"Applying for Compensation for Participation in CAB proceeding."  
"14 CFR Part 301."

Also, public files on agency proceedings may be examined at CAB in Room 711, 1825 Connecticut Avenue, N.W., Washington, D.C., during normal business hours Monday-Friday.

### Information Contact

For more information about the funding program contact:

Glen E. Robards, Jr.  
Assistant to the Managing Director  
Civil Aeronautics Board  
1825 Connecticut Avenue, N.W.  
Washington, D.C. 20428  
Telephone: (202) 673-5180

For documents on funding phone (202) 673-5432.

For information on public participation, apart from the funding program:

Mark Schwimmer  
Rules and Legislation Division  
Office of the General Counsel  
Civil Aeronautics Board  
1825 Connecticut Avenue, N.W.  
Washington, D.C. 20428  
Phone: (202) 673-5442

For consumer complaints contact:  
Consumer Assistance Section  
Bureau of Consumer Protection  
Civil Aeronautics Board  
1825 Connecticut Avenue, N.W.  
Washington, D.C. 20428  
Telephone: (202) 673-6047

## Commodity Futures Trading Commission (CFTC)

### Functions

The CFTC is an independent regulatory agency that exercises rulemaking and enforcement powers over trading on 10 commodity exchanges offering futures contracts in a wide variety of commodities. The Commission's regulatory and enforcement programs are designed to prevent deliberate market distortions and manipulations, to ensure fair trade processes, to protect the financial integrity of the marketplace and the brokerage community; and to assure the rights of customers, while providing an additional forum for release of their legitimate grievances.

The CFTC also administers a reparations procedure under which it can order a firm or person to pay damages to someone who proves damage by that person or firm caused by a violation of the Commodity Exchange Act as amended, or of CFTC regulations. This procedure provides an alternative to arbitration or litigation for members of the public who believe they have been damaged by persons or companies registered with or required to be registered with the CFTC, including floor brokers, futures commission merchants, commodity trading advisors, commodity pool operators and associated persons.

#### Public Participation Funding

None.

#### Public Participation Documents

CFTC 101: Reparations

CFTC 102: Economic Purposes of Futures Trading

CFTC 103: Farmers, Futures and Grain Prices

#### Information Contact

For information concerning public participation or being included on the agency's public information mailing list call or write:

David Rosen, Director  
Office of Public Information  
Commodity Futures Trading  
Commission

2033 K Street, N.W.  
Washington, D.C. 20581  
Phone (202) 254-8630

For publications requests contact:  
Irwin B. Johnson

Division of Economics and Education  
Commodity Futures Trading  
Commission

2033 K Street, N.W.  
Washington, D.C. 20581  
Phone (202) 254-5273

CFTC's Consumer Hotline provides information concerning firms or persons dealing in commodity futures or similar instruments, such as options and leverage. The toll-free phone numbers are:

(800) 424-9838  
Alaska, Hawaii: (800) 424-9707  
Metro D.C. area: (202) 254-7837

#### Consumer Product Safety Commission (CPSC)

##### Units That Issue Regulations

The Commission votes on and issues all regulations from the Agency

##### Functions

CPSC issues rules that concern the manufacture and distribution of products so as to ensure the health and safety of the public.

#### Public Participation Funding

CPSC established an Office of Public Participation (OPP) in January, 1977, primarily to administer a funding program for public participants in agency proceedings.

CPSC provides reimbursement to selected participants in agency proceedings where public comments are invited, such as matters involving the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act. CPSC selects the proceedings in which there is opportunity for financial compensation of public participants.

For more information contact the Office of Public Participation.

#### Public Participation Documents

"CPSC's Office of Public Participation and Financial Compensation Program" and a weekly document called "The Public Calendar" are both available from the Office of the Secretary.

#### Information Contact

Catherine Bolger  
Office of Public Participation  
Consumer Product Safety Commission  
1111 Eighteenth Street, N.W.  
Room 300

Washington, D.C. 20207  
Phone (202) 254-6241

For public participation documents call or write:

Office of the Secretary  
Consumer Product Safety Commission  
1111 Eighteenth Street, N.W.

Room 300  
Washington, D.C. 20207  
Phone (202) 634-7700

Toll-free hotlines:  
Continental US: (800) 638-8328  
Maryland only: (800) 492-8363  
Alaska, Hawaii, Virgin Islands and  
Puerto Rico: (800) 638-8333

A teletype for the deaf is available from 8:30 a.m. to 5:00 p.m., Monday-Friday, for those who call the hotline number.

#### Federal Communications Commission (FCC)

##### Units That Issue Regulations

The FCC's seven-member Commission issues and approves all agency regulations.

##### Functions

The FCC regulates both interstate and U.S.-foreign radio, television, wire, cable, and satellite communications.

The FCC publishes a "Sunshine Agenda" prior to each open FCC meeting that provides brief summaries of each item scheduled for discussion.

The FCC's Consumer Assistance Office (CAO) conducts public participation workshops in various locations across the country. These sessions teach members of the public how to participate in FCC rulemaking proceedings.

CAO also publishes *Feedback*, a plain English, consumer-oriented summary of major FCC proposals, and *Actions Alert*, a weekly bulletin reminding consumers of major pending actions at the FCC.

#### Public Participation Funding

The FCC is considering the creation of a program to fund public participation. At this time, the FCC does not have such a program.

#### Public Participation Documents

You can obtain the following documents on public participation as well as other publications about the agency from the FCC's Consumer Assistance Office free of charge.

"A Guide to Open Meetings"  
"The Public and Broadcasting: A Procedure Manual"  
"How FCC Rules are Made"  
"FCC Information Seekers Guide"  
"FCC *Feedback*"  
"FCC *Actions Alert*"

#### Information Contact

Erika Ziebarth Jones  
Acting Chief  
Consumer Assistance Office  
Federal Communications Commission  
Room 258  
1919 M Street, N.W.  
Washington, D.C. 20554  
Phone (202) 632-7000

Call the Consumer Assistant Office for information on receiving its mailing lists for *Feedback* and *Actions Alert*. The CAO operates a special phone for the hearing impaired 8:00 A.M. to 5:30 P.M., Monday-Friday. Telephone: (202) 632-6999.

For a recorded list of FCC press releases telephone (202) 632-0002 (the recording is changed twice daily).

#### Federal Deposit Insurance Corporation (FDIC)

##### Units That Issue Regulations

FDIC's Board of Directors issues regulations for the agency.

##### Functions

FDIC administers a Federal insurance program for the deposits in banks belonging to the Federal Reserve System and in State banks and U.S. branches of foreign banks that apply and qualify for FDIC insurance. It also regulates at the Federal level FDIC-insured State chartered banks that are not members of the Federal Reserve System.

**Public Participation Funding**

Consideration is given on a case-by-case basis. Requests should be directed to the Deputy to the Chairman listed below under "Information Contact."

**Public Participation Documents**

FDIC Statement of Policy entitled "Development and Review of FDIC Rules and Regulations." Copies can be obtained from the Information Office listed below.

**Information Contact**

For information on public participation:

Hoyle L. Robinson  
Executive Secretary  
Office of the Executive Secretary  
Federal Deposit Insurance Corporation  
550—17th Street, N.W.  
Washington, D.C. 20429  
Phone (202) 389-4425

For information on funding:  
Alan R. Miller

Deputy to the Chairman  
Federal Deposit Insurance Corporation

550—17th Street, N.W.  
Washington, D.C.  
Phone (202) 389-4211

For publications requests:  
Information Office

Federal Deposit Insurance Corporation

550—17th Street, N.W.  
Washington, D.C. 20429  
Phone (202) 389-4221

**Federal Election Commission (FEC)**

**Units That Issue Regulations**

All regulations issued by the Federal Election Commission are approved by affirmative vote of at least four Commissioners. No office of the Commission has authority to issue regulations without such approval.

Regulations promulgated under the Federal Election Campaign Act of 1971, as amended [2 U.S.C. § 431, et. seq.], and chapters 95 and 96 of the Internal Revenue Code of 1954 [Title 26, United States Code] must be transmitted to Congress prior to final prescription. If neither House of Congress disapproves the proposed regulation within 30 legislative days after transmittal, it may be prescribed by the Commission. [See, 2 U.S.C. § 436(c), 26 U.S.C. §§ 9009(c), 9039(c).]

**Functions**

The Federal Election Commission administers, formulates policy, and seeks to obtain compliance with respect to the Federal Election Campaign Act of 1971, as amended, and chapters 95 and

96 of the Internal Revenue Code of 1954. Its functions include administering the Federal campaign finance disclosure requirements, contribution and expenditure limitations; prohibitions on certain contributions to Federal Candidates, and public financing of Presidential nominating conventions and elections.

**Public Participation Funding**

None.

**Public Participation Documents**

None.

**Information Contact**

Dr. Gary Greenhalgh  
Assistant Staff Director for Public Information

Federal Election Commission

1325 K Street, N.W.  
Washington, D.C. 20463

Phone: (202) 523-4068

Outside the Washington, D.C. metro area phone (800) 424-9530.

**Federal Energy Regulatory Commission (FERC)**

**Units That Issue Regulations**

There are no administrative units within the Federal Energy Regulatory Commission that have the authority to issue regulations. The full Commission votes on and issues all FERC regulations.

**Functions**

FERC is an independent five-member commission within the Department of Energy (DOE). As the successor to the former Federal Power Commission, FERC sets rates and charges for transporting and selling natural gas, for transmitting and selling electricity, and for licensing hydroelectric power projects. FERC also decides whether to exercise independent jurisdiction in many DOE regulatory policies.

FERC often holds public hearings and informal public conferences in Washington, D.C., and other regions of the country on major rulemaking proposals. These hearings and conferences generally are presided over by a member of the Commission and are announced in the Federal Register.

Also, after a proposed rule appears in the Federal Register the public has 45 days in which to submit written comments on the proposal. The Commission requires 14 copies of written comments, but in special circumstances the Commission may waive that requirement.

**Public Participation Funding**

In spite of the Commission's efforts to obtain compensation for public

participation, the Congress wrote an absolute restriction on public participation funding into the FERC's FY 1980 appropriation bill.

**Public Participation Documents**

While the Commission does not have any publications specifically on public participation, it does maintain several mailing lists designed to disseminate widely information on its activities and on ongoing proceedings free of charge. These mailing services are as follows:

- Department of Energy Weekly Announcements—a weekly compilation of all news releases issued by FERC and DOE.
- RU Mailing List—All FERC orders in rulemaking dockets.
- NGPA Mailing List—Natural Gas Policy Act releases, notices, rulemakings.
- Mailing List for Consumer Organizations—Commission Announcement notices, etc., that are of interest to consumer organizations.
- Incremental Pricing Mailing List—Incremental Pricing, notices and rulemakings.

Lists of all publications and special reports issued by the FERC can also be obtained from the Division of Public Information within the Office of Congressional and Public Affairs. The Division of Public Information plans to issue in the near future a guide to public information available at the FERC.

**Information Contact**

For more information on FERC's public participation program call or write:

Office of the Secretary  
Federal Energy Regulatory Commission  
825 North Capitol Street N.E.  
Room 9310  
Washington, D.C. 20426  
Phone: (202) 357-8400 or  
Office of Congressional and Public Affairs

Federal Energy Regulatory Commission  
825 North Capitol Street, N.E.  
Washington, D.C. 20426  
Phone: (202) 357-8373  
For further information on public participation funding at the FERC:  
Kenneth S. Levine  
Director, Office of Congressional and Public Affairs  
Federal Energy Regulatory Commission  
825 North Capitol Street, N.E.  
Washington, D.C. 20426  
Phone: (202) 357-8373

The FERC Division of Public Information within the Office of Congressional and Public Affairs also

maintains a daily recorded message listing all orders and notices issued by the Commission. The message is changed at 10:00 a.m. and 3:00 p.m. each day; call (202) 357-8555.

#### Federal Home Loan Bank Board (FHLBB)

##### Units That Issue Regulations

Office of General Counsel Regulations Division

##### Functions

The Board is an independent regulatory agency that charters Federal savings and loan associations, provides insurance of accounts in both Federal and State-chartered associations through the Federal savings and loan insurance corporation; and issues and enforces regulations to ensure safe and sound operation of savings and loan institutions under its jurisdictions.

##### Public Participation Funding

None.

##### Public Participation Documents

Information on public participation in Board meetings, hearings, and other aspects of the regulatory process is available in 12 CFR Part 505.

##### Information Contact

Frank O. Bolling, Director  
Communications Office  
Federal Home Loan Bank Board  
1700 G Street, N.W.  
Washington, D.C. 20552  
Phone: (202) 377-6677

The Board maintains a general public information mailing list. Any interested person may be included on the list by calling or writing the Communications Office above.

Copies of press and statistical releases are also available.

#### Federal Maritime Commission (FMC)

##### Functions

FMC is an independent regulatory agency primarily responsible for administering Federal statutes concerned with the regulation of ocean shipping in the U.S. foreign commerce and the U.S. domestic offshore commerce.

Shippers are the FMC's real consumers since individuals are not connected usually with ocean freight rates and practices. While any interested party may participate in rulemaking proceedings, public replies to written comments submitted are allowed when the FMC deems it necessary or desirable in complicated or important rulemakings.

FMC also has a public reference/dockets room where the public can review files on agreements and tariffs. The eight FMC field offices also have public reference rooms. Call the Office of Public Participation listed under "Information Contact" for the field office nearest you if it is not listed in your telephone directory.

##### Public Participation Funding

None.

##### Public Participation Documents

None.

##### Information Contact

The agency contacts for public participation are:

Francis C. Hurney, Secretary  
Federal Maritime Commission  
1100 L Street, N.W.  
Room 11101  
Washington, D.C. 20573  
Phone: (202) 523-5725 or  
Otto J. Kirse  
Office of Public Participation  
Federal Maritime Commission  
1100 L Street, N.W.  
Room 11101  
Washington, D.C. 20573  
Phone: (202) 523-5800

#### Federal Mine Safety and Health Review Commission (FMSHRC)

##### Units That Issue Regulations

With the exception of certain administrative matters, the agency does not engage in the formal promulgation of regulations; the primary function of FMSHRC is to adjudicate.

##### Functions

Congress created FMSHRC as an independent agency to adjudicate disputes under the Mine Safety and Health Act of 1977.

Section 105(c) of the Act (30 U.S.C. 815(c)) contains a Congressional mandate for legal representation for miners and their representatives in private disputes brought before FMSHRC against mine operators because of alleged discrimination in safety and health matters. Congress provided that when the Solicitor of the Department of Labor does not provide legal representation, a miner or representative who wins the dispute can recoup costs, including attorney fees, from the mine operator.

FMSHRC presently is examining the Act to determine whether there exist other possibilities for encouraging public participation in proceedings before it.

##### Public Participation Funding

The provision by Congress for a miner or his representative to recoup costs and

legal fees under certain circumstances in discrimination and compensation cases may be found at Title 30, Section 815(c) of the United States Code.

There is no additional provision or procedure for funding of public participation at this time, although such a plan is in the initial stages of consideration by the agency.

##### Public Participation Documents

The Rules of Procedure for cases tried before FMSHRC are available from FMSHRC or can be found in Title 29, Part 2700 of the Code of Federal Regulations.

FMSHRC also is considering the publication of a pamphlet explaining how the Commission operates.

##### Information Contact

Donald F. Terry  
Executive Director  
Federal Mine Safety and Health  
Review Commission  
1730 K Street, N.W.  
Sixth Floor  
Washington, D.C. 20006  
Phone: (202) 653-5625

#### Federal Reserve System (FRS)

##### Units That Issue Regulations

Board of Governors of the Federal Reserve System

##### Functions

The primary responsibility of the Federal Reserve System is the conduct of monetary policy which affects the availability of money and credit. It exercises supervisory and regulatory authority over member banks and all bank holding companies. It also acts as the fiscal agent for the Treasury and has responsibility for implementing numerous consumer laws such as Truth in Lending.

Depending upon the nature of the proposed regulation and the interests of the affected sector, the Federal Reserve Board (FRB) utilizes a variety of outreach procedures, including publishing an advance notice of proposed rulemaking (ANPRM) that may suggest specific issues on which comments should be focused. FRS may also choose to schedule an informal public hearing or directly solicit views from interested persons or groups.

The Board's Regulations B and Z, which implement the Equal Credit Opportunity and Truth in Lending Acts, provide for special public participation in matters related to the Acts. If the FRB receives a request for public comment on an official staff interpretation of these regulations before the effective date is suspended, the FRB will

republish the proposed staff interpretation for public comment.

#### Public Participation Funding

None.

#### Public Participation Documents

Rules of Procedure, 12 CFR 262  
Rules of Organization and Procedure of the Consumer Advisory Council, 12 CFR 267

Rules Regarding Public Observation of Meetings, 12 CFR 261b

Procedures for Issuing Official Staff Interpretations of Regulations B and Z, 12 CFR 202.1(d), 226.1(d)

#### Information Contact

Joseph R. Coyne  
Assistant to the Board  
Federal Reserve Board  
Washington, D.C. 20551  
Phone: (202) 452-3204

To include your name on the agency's general public information mailing list or to obtain copies of the public participation documents listed above call or write:

Publications  
Federal Reserve Board  
Washington, D.C. 20551  
Telephone: (202) 452-3244

#### Federal Trade Commission (FTC)

##### Units That Develop Regulations

Bureau of Consumer Protection  
Bureau of Competition

##### Functions

The Commission's functions are aimed at promoting competition and fair and honest dealing in the economy. It seeks to remove market restrictions that drive up prices and limit the supply of goods and services. It also seeks to protect consumers by ensuring that commercial information available to consumers is accurate and complete.

##### Public Participation Funding

By statute, the FTC has the authority to compensate people for participation in most FTC Bureau of Consumer Protection rulemaking proceedings. Interested persons, whether they represent a consumer or a small business point of view, can be funded if they meet the statutory criteria. Direct questions regarding such compensation to the person listed under "Information Contact."

##### Public Participation Documents

"Staff Guidelines"  
"Rulemaking and Public Participation Under the FTE Improvement Act"  
"Applying for Reimbursement for FTC Rulemaking Participation"

#### Information Contact

For information on general public participation and funding please call or write:

Bonnie Naradzay  
Special Assistant for Public Participation  
Office of the General Counsel  
Federal Trade Commission  
Washington, D.C. 20580  
Telephone: (202)-523-3796

#### Interstate Commerce Commission (ICC)

##### Units That Issue Regulations

Bureau of Accounts  
Bureau of Operations  
Bureau of Traffic  
Office of Policy and Analysis  
Office of Proceedings

##### Functions

Congress created the Interstate Commerce Commission in 1887 to regulate railroads, trucking companies, bus lines, freight forwarders, and water carriers.

In the transportation economics area the Commission settles controversies over rates and charges among competing carriers; in the transportation service area the Commission grants the right to operate to the companies it regulates.

ICC's Office of Special Counsel represents the public interest in all agency proceedings.

##### Public Participation Funding

No funding available at this time.

##### Public Participation Documents

"Motor Carrier Information Bulletin, No. 1," Bulletin No. 1," published by ICC's Bureau of Operations.

"Motor Carrier Information Bulletin, No. 2" published by ICC's Bureau of Operations.

"Buying Transportation," Public Advisory No. 7, published by ICC.

"Entering the Trucking Business," Public Advisory No. 6, published by ICC.

All publications are free of charge and available from the Small Business Assistance Office listed below.

##### Information Contact

For information on public interest issues in agency proceedings call or write:

Edward J. Schack, Special Counsel  
Office of the Special Counsel  
Interstate Commerce Commission  
12th St. and Constitution Ave., N.W.  
Washington, D.C. 20423  
(202) 275-7411 or  
Small Business Assistance Office  
Interstate Commerce Commission  
12th St. and Constitution Ave., N.W.

Washington, D.C. 20423

(202) 275-7597

To include your name on the agency's general public information list call or write:

Interstate Commerce Commission  
Office of Communications  
12th St. and Constitution Ave., N.W.  
Washington, D.C. 20423  
(202) 275-7252

Consumer Hotline: (800) 424-9312

Spanish-speaking Coordinator:  
(202) 275-7574

#### National Labor Relations Board (NLRB)

Insamuch as the NLRB does not normally utilize rulemaking procedures for the purpose of issuing rules and regulations, the NLRB has no regulatory units.

##### Functions

NLRB has two basic functions. They are (1) to determine through secret ballot elections, the free choice of employees as to whether they wish to be represented by a union for collective bargaining purposes; and (2) to prevent and remedy unfair labor practices by either employers or unions which adversely affect employees' rights to self-organization and collective bargaining.

##### Public Participation Documents

"A Guide to Basic Law and Procedures Under the National Labor Relations Act."

This guide is available through the Superintendent of Documents, U.S. Printing Office, Washington, D.C. 20402, at a charge of \$2.20.

##### Public Participation Funding

The NLRB does not offer funding for public participation.

##### Information Contact

Thomas W. Miller, Jr., Director  
Division of Information  
National Labor Relations Board  
1717 Pennsylvania Avenue, N.W.  
Room 710  
Washington, D.C. 20750  
Telephone: (202) 632-4950

The Division of Information also maintains several mailing lists that include the following:

1. Weekly Summary of NLRB Cases
2. Monthly Election Reports
3. News Releases

#### Occupational Safety and Health Review Commission (OSHR)

##### Units That Issue Regulations

The Review Commission does not issue regulations, but does issue rules of

procedure which govern its administrative proceedings.

#### Functions

The Review Commission is an independent quasi-judicial agency created by Congress to adjudicate contested enforcement actions arising under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678.

#### Public Participation Funding

None.

#### Public Participation Documents

"A Guide to Procedures of the Occupational Safety and Health Review Commission," (also available in Spanish)

"OSHRC: The Federal Job Safety and Health 'Court'"

"Rules of Procedure"

These are available free from the Office of Information at the address below.

#### Information Contact

Linda Dodd  
Public Information Officer  
Occupational Safety and Health  
Review Commission  
1825 K Street, N.W., Room 701  
Washington, D.C. 20006  
Phone: (202) 634-7943

### Nuclear Regulatory Commission (NRC)

#### Units That Issue Regulations

The Executive Director for Operations Under 10 CFR 1.40(d) the Executive Director for Operations has been delegated authority to issue amendments to the Commission's regulations which are corrective, minor, or non-policy in nature, and do not substantially modify existing regulations. The Executive Director for Operations also may issue amendments to regulations in final form, if no significant adverse comments or questions have been received on the proposed rule change.

In addition, under 10 CFR 1.40(o), the Executive Director has been delegated authority to deny petitions for rule making of a minor or non-policy nature, where the grounds for denial do not substantially modify an existing precedent.

#### Functions

The NRC regulates civilian nuclear activities to protect the public health and safety, national security, and the quality of the environment as well as to ensure that the public and private sectors obey the antitrust laws.

NRC has taken steps to enhance both the accessibility and quality of public

participation in its rulemaking activities. These steps include:

- Placing Commission staff papers discussed in open Commission meetings in the public docket room;
- Publishing an agenda of petitions for rulemaking;
- Publishing quarterly a status summary report called the "Green Book" that lists, among other things, those regulations under development by the Office of Standards Development;
- Publishing advance notice of proposed rulemaking (ANPRM) on major actions;
- Providing the Commission, and making available to the public, an analysis of comments and a discussion of their resolution; and
- Holding public hearings or meetings on rulemaking actions of particular interest and importance.

#### Public Participation Funding

None.

#### Public Participation Documents

The NRC's Annual Report, for sale by the Superintendent of Documents, Government Printing Office, includes a section which discusses provisions in NRC regulations for formal participation by the public in rule making, licensing and other proceedings.

The conduct of Commission proceedings, including the opportunities for public participation, is in 10 CFR Part 2 of the Commission's regulations, "Rules of Practice for Domestic Licensing Proceedings."

NRC's procedures for public participation in agency rulemaking are set forth in Subpart H Rules Making, of NRC's Rules of Practice (10 CFR Part 2).

#### Information Contact:

For information concerning the status of proposed rules or petitions for rulemaking or other information concerning NRC's rulemaking activities, call or write:

Chief, Rules and Procedures Branch  
Division of Rules and Records  
U.S. Nuclear Regulatory Commission  
Room 1713 MNBB  
Washington, D.C. 20555  
Phone: (301) 492-7086

Address rulemaking petitions to:  
Secretary,  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attn: Chief, Docketing & Service  
Section

Copies of all petitions are available for public review at:

NRC Public Document  
1717 H Street, N.W.  
Washington, D.C. 20555

Information concerning the agency's public information mailing list can be obtained from:

Division of Technical Information and Document Control  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Phone: (301) 427-7566

### Postal Rate Commission (PRC)

#### Units That Issue Regulations

The Commission as a whole issues all decisions, which are forwarded on to the Governors of the Postal Service for final approval. The Governors, under varying requirements, may approve, allow under protest, reject, or modify a Commission decision.

#### Functions

The Postal Rate Commission is an independent Federal regulatory agency composed of five Commissioners appointed by the President, with the advice and consent of the Senate. The Commission, acting upon requests from the U.S. Postal Service or on its own initiatives, recommends changes in postal rates, mail classification and service changes. The Commission also has the appellate authority to review all Postal Service determinations to close or consolidate small post offices.

PRC's "Rules of Practice and Procedure" govern all proceedings before the Commission in addition to the laws contained in the Administrative Procedure Act.

PRC's Officer of the Commission (OOC) represents the interests of the general public in any proceeding. The agency's *ex parte* rule forbids the OOC and his/her staff to have discussion with the Commission or its advisory staff on the issues in the proceeding. This is to make sure no prejudgment exists when the Commission is hearing a case. The OOC is listed below under "Information Contact."

#### Public Participation Funding

None.

#### Public Participation Documents

None.

#### Information Contact

Any person interested in participating before the Commission may contact:

Mr. David Harris  
Secretary and Chief Administrative  
Officer

Postal Rate Commission  
2000 L St., N.W., Suite 500  
Washington D.C. 20268

Phone: (202) 254-3880

General public interest issues can be discussed with:

Stephen Sharfman  
Officer of the Commission  
Postal Rate Commission  
2000 L St., N.W.  
Room 500  
Washington D.C. 20268  
Phone: (202) 254-3840

**Securities and Exchange Commission  
(SEC)**

**Units That Issue Regulations**

All regulations are issued by the Commission as a whole. However, proposed regulations may be suggested to the Commission by any staff division or autonomous office. The principal staff units with direct responsibility for proposing regulations are:  
Division of Corporate Regulation  
Division of Corporate Finance  
Division of Investment Management  
Division of Market Regulation  
Office of Chief Accountant

**Functions**

The Commission is responsible for overseeing the operations of the nation's securities trading markets. It has direct responsibility for regulation of those engaged in trading securities or selling them to the public, such as stockbrokers, persons who trade securities on the floors of exchanges, investment advisers, mutual fund operators and others. The Commission also administers the "full disclosure system" which assures that publicly owned companies disclose publicly all material information regarding their operations. In addition, the Commission has responsibilities relating to public utility holding companies and to bankruptcies of public corporations.

**Public Participation Funding**

None.

**Public Participation Documents**

A Brochure entitled "SEC Publications" lists other material published by the Commission and is available from the Publications Section listed Below.

Notice of rule proposals as well as rule adoptions, schedules of open commission meetings, and many other announcements of interest to the public are published each day in the "SEC News Digest," which is also available by subscription from the Superintendent of Documents, at a cost of \$100 per year.

In addition to publication in the Federal Register, all rule proposals issued by the Commission are published in the "SEC Docket," which available by subscription at a cost of \$79 per year from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

**Information Contact**

Copies of specific rule proposals or corporate disclosure documents may be obtained by writing to:

Public Reference Section  
Securities and Exchange Commission  
500 North Capitol Street, N.E.  
Washington, D.C. 20549

General inquiries or questions about the availability of the above-listed documents may be addressed to:

Office of Public Affairs  
Securities and Exchange Commission  
500 North Capitol Street, N.E.  
Telephone: (202) 272-2650 or (202) 523-5360

Comments on rule proposals should be directed to:

George Fitzsimmons, Secretary to the  
Commission  
Securities and Exchange Commission  
500 North Capitol Street, N.E.  
Washington, D.C. 20549

**APPENDIX II: STATUS OF  
REGULATIONS FROM FEBRUARY,  
1979 EDITION**

This Appendix contains information about those entries that appeared in the first edition of the Calendar of Federal Regulations in February, 1979, but are not described in this edition.

Descriptions of regulations that appeared in the first edition and that are still under development by the Agencies and Departments appear in this edition, with expanded information about the problem the agency intends the regulation to solve, the costs and benefits of the proposed action, and the sectors affected.

Entries that appeared in the first edition but do not appear in this second edition either went to final rule, were withdrawn, or were subject to some other action that made them inappropriate for inclusion in this Calendar. These entries and the actions that agencies have taken on them, are noted in this appendix.

We have also noted any significant word changes in the titles of the regulations, to help the reader locate an entry that has been renamed but is described in both editions of the Calendar.

## APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOC - EDA	Special Economic Development and Adjustment Assistance Grants	11425	Postponed pending Congressional action on amendments to the Public Works and Economic Development Act.
DOC - NOAA	Regulations Implementing a Fishery Management Plan for the Stone Crab Fishery in the Gulf of Mexico Fishery Conservation Zone adjoining the West Coast of Florida from the Florida/Alabama Line	11437	Final Rule --- 44 FR 53519, 9/14/79.
DOE - ERA	Amendments to Entitlement Program to Reduce the level of Benefits Received under Small Refiner Bias	11440	Final rule --- 44 FR 25621, 5/2/79.
DOE - ERA	Amendments to Impose Entitlements Obligation to the First Purchase of Price Controlled Domestic Crude Oil	11440	"On hold" by DOE.
DOE - ERA	Deregulation of Butane, Natural Gasoline, Propane, and Other Natural Gas Liquids	11441	Still pending---no date for final rule has been established.
DOE - ERA	Exemption of Aviation Fuel from the Mandatory Petroleum Allocation and Price Regulation	11461	Final rule effective --- 44 FR 7070, 2/5/79
DOE - ERA	Exemption of Motor Gasoline from Mandatory Petroleum Allocation and Price Regulations	11441	"On hold" by DOE

# APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOE - ERA	Final Rule Implementing the Fuel Utilization Act of 1978	11444	Interim final rule 44 FR 43176, 7/23/79. Final rule on transitional facilities 44 FR 60690, 10/19/79
DOE - ERA	Final Rules with Respect to the Department of Energy's Contingency Gasoline Rationing Plan	11443	New NPRM under development reflect legislative revisions to the National Energy Policy and Conservation Act
DOE - ERA	Permanent Revision of Standby Petroleum Product Allocation and Price Regulations	11442	Still pending - no schedule for final rule has been established
HEW	Nondiscrimination on the Basis of Age in Activities Receiving Federal Financial Assistance.	11426	Final Rule -- 44 CFR 33768, 6/12/79.
HUD - FIA	Regulations Establishing Departmental Procedures for Implementing Executive Orders on Flood Plain Management and Wetlands Protection	11444	NPRM -- 44 FR 47006, 8/9/79 Going to final rule 12/79.
HUD - HOUS	Administrator Qualifications and Procedures for HUD Building Products Certification Program	11458	Final rule -- 44 FR 54656, 9/20/79

**APPENDIX II: STATUS OF REGULATIONS FROM  
FEBRUARY, 1979 EDITION**

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
HUD -- HOUS	Standards for the Design, Construction, and Alteration of Residential Structures to Ensure Accessibility to the Physically Handicapped	11427	<p>Proposed rule -- Part 40 re: revised prescription of design standards 44 FR 10586, 2/21/79.</p> <p>(Since American National Standards Institute (ANSI) will be promulgating new standards re: building access for the handicapped, HUD will not proceed to final rulemaking but will issue new proposed rules incorporating ANSI standards in 12/79.)</p> <p>Proposed rule -- Part 41 re: policies, procedures, implementation and enforcement -- 44 FR 10590, 2/21/79.</p> <p>Final Rule -- 44 FR 12358, 3/6/79.</p>
HUD -- HOUS	Tax Exemption under Section 11(b) of the United States Housing Act of 1937, of Obligations Issued by Public Housing Agencies to Finance Section 8 Projects.	11428	<p>Final rule -- 44 FR 12358, 3/6/79</p>
DOI -- OSW	Permanent Regulatory Program Implementing Section 401(b) of the Surface Mining Control and Reclamation Act of 1977	11447	<p>Final Rule -- 44 FR 14901-15309 (Bk. II), 3/13/79</p>

## APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOL - ESA	Labor Standards for Federal Service Contracts	11431	Withdrawn from Calendar by DOL -- proposed rule does not meet DOL criteria for major regulations.
DOL - ESA	Labor Standards Provisions Applicable to the Davis-Bacon Act and Related Acts and Contract Work, Hours and Safety Standards Act	11429	Withdrawn from Calendar by DOL -- proposed amendments do not meet DOL criteria for major regulations.
DOL - ESA	Proposed Amendment to Equal Pay Act Interpretative Bulletin Dealing with Insurance and other Employee Benefit Plans	11429	Transferred to EEOC.
DOL - MSHA	Regulations Providing for Automated Temporary Roof Support Standards	11396	No action anticipated within the next 12 months.
DOL - MSHA	Requirements to Provide Self-Contained (Oxygen Generating) Self-Rescuers to Underground Metal and Nonmetal Miners	11396	Withdrawn from Calendar by DOL -- regulation does not meet criteria for major regulations
DOL - MSHA	Safety and Health Standards for Construction Work on Mine Property	11397	Change of title for this edition -- Safety and Health Standards for Construction Work at all Surface Mines and Surface Areas of Underground Mines.

## APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOL - OSHA	Identification, Classification, and Regulation of Toxic Substances Posing a Potential Occupational Carcinogenic Risk	11398	Final rule -- expected before November 28; exact citation not available at time of this publication.
DOL - OSHA	Occupational Exposure to Pesticides	11399	Change of title for this edition -- Generic standard for occupational exposure to pesticides during manufacture and formulation.
DOT	Non-discrimination on the Basis of Handicap in Federally Assisted Programs and Activities	11432	Final Rule -- 44 FR 25016, 5/31/79.
DOT - FAA	Wind Sheer Equipment Requirements	11401	Withdrawn - determined not to be a "major" regulation.
DOT - NHTSA	Fuel Economy Standards for Model Years 1984-1986 Passenger Cars	11448	Withdrawn to concentrate efforts on light truck fuel economy standards in the near term.
DOT - USCG	Implementation of the Port and Tanker Safety Act of 1978 and the International Conference on Tanker Safety and Pollution Prevention by Requiring Ballast Tanks, Dedicated Clean Ballast Tanks, and Crude Oil Washing Systems for Certain New and Existing Tank Vessels.	11451	Final rule -- exact citation not available at time of this publication.

# APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOT - USCG	Offshore Oil Pollution and Liability and Compensation Fund.	11449	Final rule -- 44 FR 16860, 3/19/79.
DOT - USCG	Requirements for Inert Gas Systems for Oil Tankers of Over 20,000 Dead Weight Tons	11403	Final rule -- exact citation not available at time of this publication.
EPA - OANR	Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Engines	11408	Change of title for this edition -- Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Vehicles.
EPA - OANR	Prevention of Significant Deterioration.	11452	Change of title for this edition -- Regulations for the Prevention of Significant Deterioration (PSD) Resulting From Hydrocarbons for Carbon Monoxide, Nitrogen Oxides, Ozone, and Lead (PSD Set II).
EPA - OANR	Reducing Benzene Emissions to the Atmosphere.	11407	Change of title for this edition -- National Emission Standards for Hazardous Air Pollutants-Benzene.
EPA - OANR	Standards of Performance to Control Atmospheric Emissions from Utility Fossil-Fuel-Fired Steam Generators	11452	Final Rule -- 44 FR 33580, 6/11/79.
VA	Implementation of the Veteran's and Survivor's Pension Improvement Act	11434	Final rule -- 44 FR 45930, 8/6/79.

## APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
VA	Implementation of the Veterans Disability Compensation and Survivors Benefit Act of 1978	11434	Final Rule -- 44 FR 22716, 4/17/79.
CAB	Market Entry Policies	11464	Withdrawn by CAB.
CAB	Revision of Airline Passenger Rules Tariffs	11464	Change of title for this edition -- Plain English for Airline/Passenger Contracts.
CPSC	Blade Contact Standards for Walk-behind Power Lawn Mowers and Proposed Certification Rule	11418	Final Standard -- 44 FR 9990, 2/15/79. Certification Rule -- 44 FR 10033, 2/15/79.
CPSC	Proposed Amendment to Cellulose Insulation Standard, Proposed Labelling Rule for Cellulose Insulating and Proposed Certification Rule	11420	Labelling requirement of final rule -- 44 FR 3993, 7/6/79. Final rule on amendment to standard -- 44 FR 39938, 7/6/79. Final rule for interim safety -- 44 FR 39983, 7/6/79.
FERC	Mandatory Requirements for the Collection and Reporting of Information Associated with the Costs of Providing Electric Service	11455	Final Rule -- 44 FR 33847, 6/13/79
FERC	Regulations Implementing Incremental Pricing under Title II of the Natural Gas Policy Act of 1978.	11454	Final rule for first stage -- 44 FR 57726, 10/5/79; 44 FR 57754, 10/5/79. See entry in this edition of the Calendar for regulation implementing 2nd stage.

## APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
FERC	Regulations Implementing Section 401 of the Natural Gas Policy Act of 1978	11455	Final Rule -- 44 FR 26855, 5/8/79.
ICC	Investigation of Railroad Freight Rates for Recyclable Commodities	11456	ICC Decisions -- 361 I.C.C. 641 (1979); 361 I.C.C. 856 (1979).
ICC	Policy Statement of Motor Carrier Regulations (Ex Parte No. MC-121)	11466	I.C.C. Decision -- 44 FR 60296, 10/19/79.
ICC	Rail General Exemption Authority - Fresh Fruits and Vegetables (Ex Parte No. 346 (Sub. - No..1))	11466	Final Rule -- 44 FR 18229, 3/27/79.
PRC	U.S. Postal Service Request for Changes in the Domestic Mail Classification Schedule as it Relates to Bulk Parcel Post, Docket MC 78-1, Filed with the Commission on 9/8/78	11467	Proceeding extended to 12/5/79; Evidentiary record -- expected to close by 11/1/79.
PRC	U.S. Postal Service Request for a Recommended Decision on Establishing An Electronic Computer Originated Mail Subclass, Docket MC 78-3, Filed with the Commission on 9/8/78	11468	Hearings Completed; Commission decision -- expected by 12/79.
PRC	U.S. Postal Service, Surcharge Rate Request for Nonstandard Mail, Docket R78-1, Filed with the Commission on April 25, 1978.	11469	Commission Recommended Decision -- 2/26/79. Commission Recommended Decision approved by Governors of the Postal Service -- 4/3/79.

### APPENDIX III: PUBLICATION DATES FOR AGENCY REGULATORY AGENDAS

In response to Executive Order 12044, all Executive Agencies, and those independent agencies that voluntarily choose to comply, publish semiannual agendas of significant regulations under development and review. The agendas describe the regulations the agencies are considering, the need for and the legal basis of the action being taken, the status of regulations previously listed on the agenda, and an agency contact.

While the regulations described in this Calendar are those considered most important by the agencies submitting entries, those regulations listed on the semiannual agendas include all those

that are considered significant by the agencies—a larger list. This index provides the dates of each agency's last published semiannual agenda and the Federal Register citation to enable the public to gain quick access to a list of all significant regulations the agency is considering or reviewing. The appendix also lists the expected date of publication of the next agenda.

The Regulatory Council and the Office of Management and Budget are exploring the possibility of coordinating the publication dates of the Calendar of Federal Regulations and the semiannual agency agendas. Doing so would provide, twice a year, a comprehensive picture of regulations being developed by the agencies. We welcome your comments on this idea.

### APPENDIX III: PUBLICATION DATES FOR AGENCY REGULATORY AGENDAS

#### Executive Agencies

Name of agency	Publication date of last agenda	Federal Register citation	Publication date of next agenda
Administrative Conference of the U.S.	Not applicable		
Department of Agriculture	May 15, 1979	44 FR 26474	November 15, 1979.
Department of Commerce	September 18, 1979	44 FR 54166	May 15, 1980.
Department of Energy	November 9, 1979	44 FR 65274	April 25, 1980.
Department of Health, Education, and Welfare	August 16, 1979	44 FR 46040	December 14, 1979.
Department of Housing and Urban Development	August 1, 1979	44 FR 45342	February 1, 1980.
Department of the Interior	July 20, 1979	44 FR 42701	January 31, 1980.
Department of Justice, Civil Rights Division	August 1, 1979	44 FR 45295	On or before January 31, 1980.
Drug Enforcement Administration	September 19, 1979	44 FR 45312	On or before January 31, 1980.
Immigration and Naturalization Service	Anticipated January 31, 1980 (first agenda).		
Law Enforcement Assistance Administration	April 20, 1979	44 FR 23770	Anticipated November 1979.
Parole Commission	March 23, 1979 (first agenda).	44 FR 17756	On or before January 31, 1980.
Department of Labor	November 13, 1979	44 FR 65566	First week in April, 1980.
Department of Transportation	August 27, 1979	44 FR 50140	February 25, 1980.
Department of the Treasury, Comptroller of the Currency	September 5, 1979	44 FR 51813	February 1, 1980.
Government Financial Operations Bureau	September 28, 1979	44 FR 55910	March 31, 1980.
Internal Revenue Service	October 1, 1979	44 FR 56504	March 31, 1980.
Public Debt Service	October 15, 1979	44 FR 59246	April 15, 1980.
All other offices and bureaus	August 1, 1979	44 FR 45326	February 1, 1980.
Environmental Protection Agency	June 8, 1979	44 FR 33332	December 1979
Equal Employment Opportunity Commission	November 2, 1979	44 FR 63485	January 19, 1980.
General Services Administration	May 18, 1979	44 FR 29368	November 30, 1979.
National Credit Union Administration	July 2, 1979	44 FR 38560	December 17, 1979.
Small Business Administration	August 2, 1979	44 FR 45412	January 31, 1980.
United States International Trade Commission	Not applicable		
Veterans Administration	June 18, 1979	44 FR 34971	December 18, 1979.

#### Independent Regulatory Agencies

Civil Aeronautics Board	November 9, 1979	44 FR 65104	May, 1980.
Commodity Futures Trading Commission	January 23, 1979	44 FR 4752	Not known at present.
Consumer Product Safety Commission	Not known at present		
Federal Communications Commission	October 29, 1979	44 FR 61979	April 21, 1980.
Federal Deposit Insurance Corporation	September 28, 1979	44 FR 55890	March, 1980.
Federal Election Commission	Not applicable		
Federal Energy Regulatory Commission	Not applicable		
Federal Home Loan Bank Board	October 5, 1979	44 FR 57419	March, 1980.
Federal Maritime Commission	Not applicable		
Federal Mine Safety and Health Review Commission	Not applicable		
Federal Reserve System	August 2, 1979	44 FR 45406	February 4, 1980.
Federal Trade Commission	August 1, 1979	44 FR 45177	February 1, 1980.
Interstate Commerce Commission	July 19, 1979	44 FR 42561	Early 1980.
National Labor Relations Board	Not applicable		
Nuclear Regulatory Commission	Not known at present		
Occupational Safety and Health Review Committee	Not applicable		
Postal Rate Commission	Not applicable		
Securities and Exchange Commission	September 10, 1979	44 FR 52810	Exact date not known at time of this publication.

## APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

In response to Executive Order 12044, Executive Agencies and those Independent Agencies who voluntarily chose to comply, must periodically review their existing regulations to determine whether they are still effectively achieving their intended goals. This index lists those important regulations that agencies are reviewing pursuant to the Executive Order or their own internal review procedures.

In some cases, regulatory actions described in Calendar entries were initiated as a result of this review process. These are not included a second time in the Appendix, since they are described in the text.

Contact the "information contact" listed in Appendix II: "Public Participation in Federal Rulemaking," for guidance on how to get further information on these regulations.

AGENCY	TITLE OF REGULATION	CITATION
USDA	Emergency Watershed Protection Program (Section 216)	7 CFR 624
USDA	Federal Seed Act	7 CFR Ch. 1, 201 and 202
USDA	Watershed Program	7 CFR 622
DOC - EDA	Business Development Program	13 CFR 306
DOC - ITA	Export Administration Regulations	15 CFR 368-399
DOL - ESA	Black Lung Benefits: Requirements for Coal Mine Operators Insurance	20 CFR 726
DOL - ESA	Criteria for Determining Whether State Workers' Compensation Laws Provide Adequate Compensation for Pneumoconioses	20 CFR 722
DOL - ESA	Labor Standards for Federal Service Contracts	29 CFR 4
DOL - ESA	Labor Standards Provisions, Davis-Bacon and Related Acts	29 CFR 1,3,5
DOL - ESA	Office of Federal Contract Compliance Programs	41 CFR 60-1, 60-2, 60-3, 60-4, 60-20, 60-30, 60-60, 60-250, 60-741

## APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
DOL - ESA	Standards for Determining Coal Miner's Disability on Death Due to Pneumoconioses	20 CFR 718
DOL - ETA	Extended Benefits for Unemployment Insurance Claimants	20 CFR 615
DOL - LMSA	Revision of Certain Annual Information Return/Reports	29 CFR 2520
DOL - MSHA	Respirable Dust Standard for Surface Coal Mines	30 CFR 71
DOL - MSHA	Respirable Dust Standards for Underground Coal Mines	30 CFR 70
DOL - MSHA	Underground Coal Mine Safety Standards	30 CFR 75
DOL - OSHA	Asbestos Standard	29 CFR 1910.94(a)
DOL - OSHA	Cadmium Standard	29 CFR 1910.94(a)
DOL - OSHA	Electrical	29 CFR 1910 Subpart S
DOL - OSHA	Fire Protection	29 CFR 1910 Subpart L

## APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
DOL - OSHA	Floor and Wall Openings and Stairways	29 CFR 1926 Subpart M
DOL - OSHA	Hazardous Materials	29 CFR 1910, Subpart H
DOL - OSHA	Laboratory Accreditation	29 CFR 1907
DOL - OSHA	Ladders and Scaffolding	29 CFR 1926 Subpart L
DOL - OSHA	MOCA Standard	29 CFR 1910.94(a)
DOL - OSHA	Multi-piece Wheel Rims	29 CFR 1910.177
DOL - OSHA	Nickel Standard	29 CFR 1910.94(a)
DOL - OSHA	Safety and Health Regulations for Marine Terminal Facilities	29 CFR 1918 Subparts M-S
DOL - OSHA	Shiprepairing, shipbuilding, shipbreaking	29 CFR 1915, 1916, 1917
DOL - OSHA	Tunnelling	29 CFR 1926
EPA	Effluent Guidelines	40 CFR 401-467

## APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
EPA	National Ambient Air Quality Standards	40 CFR 50
EPA	New Source Performance Standards	40 CFR 60
EEOC	Procedures for EEO in the Federal Government	29 CFR 1613
NCUA	Conversion from Federal to State Credit Union, and Conversion from State to Federal Credit Union	12 CFR 706 and 707
NCUA	Election Report, and Financial and Statistical and Other Reports	12 CFR 701.11 and 701.13
NCUA	Employee Responsibility and Conduct	12 CFR 735
NCUA	Establishment of Cash Fund	12 CFR 701.10
NCUA	Investments and Deposits	12 CFR 703.3
NCUA	Mergers of Credit Unions, Division of Assets, Liabilities, and Capital	12 CFR 708 and 709
NCUA	Minimum Security Device and Procedures	12 CFR 748
NCUA	Safe Deposit Box Service	12 CFR 701.30

## APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
NCUA	Selling and Cashing Checks and Money Orders	12 CFR 701.22 and 701.23
NCUA	Standard Form of ByLaws and Amendment of ByLaws	12 CFR 701.3 and 701.4
NCUA	Supervisory Committee Audit	12 CFR 701.12
CPSC	Safety Standard for Architectural Glazing Materials	16 CFR 1201
CPSC	Safety Standard for Swimming Pool Slides	16 CFR 1207
CPSC	Standard for the Flammability of Mattresses (and mattress pads) (FR 4-72)	16 CFR 1632
FHLBB	Insurance of Accounts	12 CFR 561 et seq.
FMC	Collection and Compromise of Civil Penalties (Docket No. 79-66)	46 CFR 505
FMC	Discovery in Formal Proceedings (Docket No. 79-12)	46 CFR 502
FMC	Exemption of Tariff Filing Requirements by Agricultural Carriers in Canadian Trades (Docket No. 79-63)	46 CFR 536

## APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
FMC	Filing of Tariffs in Domestic Offshore Trades (Docket No. 79-1)	46 CFR 531
FMC	Freight Forwarder Bids on Government Cargo (Docket No. 78-53)	46 CFR 510
FMC	Increase in Maximum Amount of Security to be Submitted by Passenger Vessel Operators (Docket No. 79-93)	46 CFR 540
FMC	Reconsideration and Stay in Formal Proceedings (Docket No. 79-52)	46 CFR 502
FMC	Self-Policing of Independent Operators	46 CFR 528
FRS	Regulation A - Extensions of Credit by Federal Reserve Banks	12 CFR 227
FRS	Regulation B--Equal Credit Opportunity	12 CFR 202
FRS	Regulation F--Securities of State Members	12 CFR 206
FRS	Regulation G--Securities Credit by Persons Other than Banks, Brokers or Dealers	12 CFR 207
FRS	Regulation H--Membership of State Banking Institutions in the Federal Reserve System	12 CFR 208

# APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
FRS	Regulation J--Collection of Checks and Other Items and Transfer of Funds	12 CFR 210
FRS	Regulation P--Minimum Security Devices and Procedures for Federal Reserve Banks and State Member Banks	12 CFR 216
FRS	Regulation Q--Interest on Deposit	12 CFR 217
FRS	Regulation T--Credit by Brokers and Dealers	12 CFR 220
FRS	Regulation U--Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks	12 CFR 221
FRS	Regulation X--Rules Governing Borrowers Who Obtain Securities Credit	12 CFR 221
FRS	Regulation Y--Bank Holding Companies	12 CFR 225
FRS	Regulation Z--Truth in Lending	12 CFR 226
FTC	Cooling-off Period for Door-to-Door Sales	16 CFR 429
FTC	Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures	16 CFR 436

APPENDIX IV: IMPORTANT REGULATIONS  
SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
FTC	Proprietary Vocational and Home Study Schools Trade Regulation Rule	16 CFR 438
FTC	Retail Food Store Advertising and Marketing Practices	16 CFR 424
ICC	Abandonment of Railroad Lines and Discontinuance of Service (Ex Parte No. 274 (Sub-Nos. A, B, and D))	49 CFR 1110-1119
ICC	Anti-trust and Competition Factors in Motor Carrier Finance Proceedings (Ex Parte No. 55 (Sub-No. 38))	49 CFR 1132-1135
ICC	Passenger and Freight Tariffs and Schedules (Ex Parte No. 284 (Sub-No. 2))	49 CFR 1300-1310

APPENDIX V: STATEMENTS FROM AGENCIES WITH NO ENTRIES IN THIS EDITION OF THE CALENDAR

For various reasons, eleven agencies—Independent and Executive—of the Council did not submit entries describing proposed regulations for this edition of the Calendar. This appendix includes letters from the heads of those agencies, explaining why they did not submit entries for this edition.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500  
WASHINGTON, D.C. 20037  
(202) 254-7020

OFFICE OF  
THE CHAIRMAN

November 15, 1979

The Honorable Douglas M. Costle  
Chairman  
The Regulatory Council  
401 M Street, N.W.  
Washington, D.C. 20460

Dear Mr. Costle:

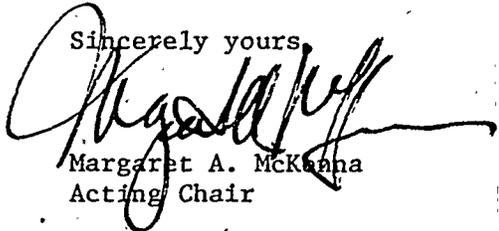
This responds to your request for a letter of explanation about why the Administrative Conference of the United States has not submitted entries for inclusion in the Regulatory Council's Calendar of Federal Regulations.

The Administrative Conference has no regulatory responsibilities. The only regulations it issues pertain to its organizational duties and are therefore not covered by Executive Order 12044, or appropriate for inclusion on the calendar.

I understand that you wish to publish this letter in the appendix to your calendar. For the information of those who may wish to know more about the Administrative Conference, our organization regulations are found at Title 1 of the Code of Federal Regulations, parts 301-304. The formal work product of the Conference is reflected in Recommendations and Statements concerning administrative practice and procedure. These are adopted in Plenary Sessions of the Conference, published in the Federal Register and codified at 1 C.F.R. parts 305 and 310. Further information is available from my office (202/254/7020).

We, of course, continue to support the Council's publication of a regulatory calendar, as a concrete aid to improving the management of the regulatory process.

Sincerely yours,

  
Margaret A. McKenna  
Acting Chair



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

November 19, 1979

Honorable Douglas Costle  
Chairman, Regulatory Council  
Environmental Protection Agency  
401 M Street, S. W.  
Washington, D. C. 20450

Attention: Mark Schoenberg

Dear Mr. Chairman:

It is my privilege to acknowledge our recent appointment to the Regulatory Council. Since our participation began subsequent to your preparation of the upcoming semiannual Calendar of Regulations, we will not be furnishing you with a submission for this edition. However, we look forward to working with you in the future as an active member of the Council.

Sincerely,

A. Vernon Weaver  
Administrator



UNITED STATES  
INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C. 20436

BY HAND  
November 21, 1979

The Honorable Douglas M. Costle  
Chairman  
The Regulatory Council  
401 M Street, S.W.  
Washington, D.C.

Dear Mr. Costle:

This is in response to your memorandum of November 15, 1979, in which you requested a letter describing the Commission's investigative proceedings, the nature of the analytic information processed by the Commission and the economic impact of the agency's investigations. The Commission conducts investigations concerning the impact of imports on the product markets of domestic manufacturers under different statutory authorities. The character of the Commission's investigative responsibility depends upon the specific statutory mandate. In some cases, the Commission's investigation consists of a purely informational study and no Government action is required as a result of its findings. In other cases, the executive branch is directed by statute to respond to Commission findings, recommendations, or determinations.

Very few individual investigations involve imports valued at \$100 million during a given year. On the other hand, imports valued at this amount may be subject to investigation in a given year if the values of the different imports investigated under these different statutes are aggregated. Although the individual investigations are not appropriate for a regulatory calendar describing agency rulemaking, the public may wish to follow the types of products subject to the administration of these statutes or be aware of the investigations docketed at the Commission at any given time. The Office of the Secretary at the Commission publishes a monthly calendar which describes the coverage of each investigation and indicates the date scheduled for hearings, briefs and Commission determinations.

I hope this information is helpful to you. If we can be of any further assistance, please let us know.

Sincerely,

  
Russell N. Shewmaker  
General Counsel

UNITED STATES OF AMERICA  
**COMMODITY FUTURES TRADING COMMISSION**

2033 K Street, N.W.  
Washington, D.C. 20581  
November 20, 1979



Mr. Douglas M. Costle  
Chairman  
The Regulatory Council  
Washington, D.C. 20460

Dear Mr. Costle:

Chairman Stone has asked me to respond to your letter of November 15, 1979, in which you inquire as to the Commission's progress in developing a regulatory calendar. Although certain logistic problems, such as the fact that the Commission currently schedules matters for consideration on a quarterly, rather than semi-annual basis, prevented us from making a submission to the second edition of the Calendar of Federal Regulations, I am pleased to inform you that this Commission intends to participate fully in the Council's future activities.

We look forward to working with you on this useful and important project in the months ahead.

Sincerely,

A handwritten signature in cursive script that reads "Barbara L. Leventhal".

Barbara L. Leventhal, Director  
Office of Policy Review



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE GENERAL COUNSEL

November 20, 1979

Mr. Douglas M. Costle, Chairman  
United States Regulatory Council  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Mr. Costle:

On May 21, 1979, FDIC's Board of Directors adopted a policy statement setting forth new procedures for improving and simplifying FDIC regulations. These procedures formulate a voluntary program for achieving President Carter's goal for improved Government regulations as outlined in Executive Order 12044.

As is stated in the FDIC policy statement, FDIC intends to review each of its existing regulations at least once every five years to determine whether the regulation should be continued, revised, or eliminated. The first review has been initiated and most of FDIC's existing and proposed new regulations have been reviewed. To date, action has been taken or proposed on ten (10) of these regulations. Two of the regulations were eliminated; a third was substantially reduced; a proposed regulation was withdrawn and replaced by a substantially simplified policy statement; and a proposal was issued recommending the elimination of four more regulations and the reduction and/or simplification of two others. Additional proposals to simplify and/or reduce other regulations are currently being drafted.

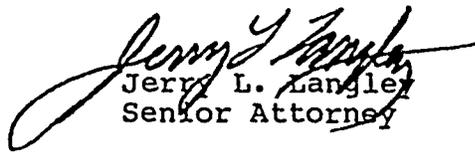
Although FDIC had regulatory matters under active or very preliminary consideration at the time of the deadline for the submission of entries for the November edition of the Calendar of Federal Regulations, it did not provide any entries either because (1) the regulation did not meet the test for "significance" prescribed by the Regulatory Council, (2) it appeared that the regulation would be finalized before the publication of the November calendar, or (3) we were in such a preliminary exploratory stage that there was insufficient information about the regulation to make its inclusion in the calendar meaningful. It should be noted, however, that FDIC published a Semiannual Agenda of Regulations in March and September of 1979 in order to provide the public the broadest possible picture of FDIC's regulatory program. The September agenda provides information on regulations

Mr. Douglas M. Costle

- 2 -

that have been proposed by FDIC but not yet finally adopted, certain regulations that are currently under development, and existing regulations that are under review. The agenda also contains a list of those regulations on which final action has been taken since the publication of the March agenda. Copies of the September agenda are available to the public at FDIC's Information Office ((202)- 389-4221).

Sincerely,

  
Jerry L. Langley  
Senior Attorney



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.  
WASHINGTON, D.C. 20463

August 6, 1979

Mr. Mark G. Schoenberg  
Associate Director for Operations  
and Interagency Coordination  
The Regulatory Council  
Washington, D. C. 20460

Dear Mr. Schoenberg:

I am writing in reference to your Memorandum of July 20, providing guidelines for entries in the November edition of the Regulatory Calendar.

Due to the nature of the Commission's regulatory activities, non of the proposed rules we are planning to issue would have sufficient economic impact to warrant their inclusion in the Calendar. We also do not plan to issue any regulations that would be of such a precedent setting nature or of such wide scope as to justify their entry in the Calendar.

Thank you for inviting us to participate in the Calendar.

Sincerely,

A handwritten signature in cursive script, appearing to read "William C. Oldaker".

William C. Oldaker  
General Counsel

cc: Chairman Tiernan

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

**CHAIRMAN**  
Jerome R. Waldie

November 19, 1979

**COMMISSIONERS**  
Richard V. Backley  
Frank F. Jestrab  
A. E. Lawson  
Marian Peariman Nease

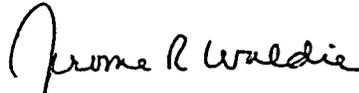
Mr. Douglas M. Costle  
Chairman  
The Regulatory Council  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Mr. Chairman:

The Federal Mine Safety and Health Review Commission is an independent adjudicatory agency created by Section 113 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. The Commission's rulemaking authority extends only to the conduct of its own proceedings, the proceedings of its administrative law judges, and rules implementing the Government in the Sunshine Act and similar procedural matters prescribed by statute. In all other respects, the Commission acts by adjudication. We do not, therefore, have an entry for the body of the upcoming Calendar of Federal Regulations.

We remain actively interested in the Regulatory Council and its goals, however, and we have submitted for the Appendix of the Calendar a description of opportunities for public participation which are contained in our Act.

Sincerely,



Jerome R. Waldie,  
Chairman

JRW:clg

THE REGULATORY COUNCIL

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551



NANCY H. TEETERS  
MEMBER OF THE BOARD

January 29, 1979

Mr. Douglas M. Costle, Chairman  
The Regulatory Council  
401 M Street, S.W.  
Washington, D. C. 20460

Dear Mr. ~~Costle~~ *Dave*:

As we informed you earlier this month, the Board of Governors, in support of the President's program to improve government regulation, has adopted a policy statement concerning its regulatory procedures. This policy is intended to improve the quality of the Board's regulations through greater public participation in their development and early involvement by Members of the Board of Governors to ensure that regulations are not unduly burdensome and complex.

To implement the new policy, the Board has just published its first semiannual regulatory agenda, listing regulatory matters likely to be under consideration during the coming six months. We are pleased to enclose a copy of the agenda, and we hope it will be useful in the execution of your program.

Sincerely,

*Nancy*

Enclosure

EDITOR'S NOTE: The Federal Reserve's semi-annual agenda is available at 44 FR 45406 (August 2, 1979).

This letter appeared in the first edition of the Calendar. We have republished it here because the Federal Reserve had nothing further to add to this letter at this time.



## NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

August 3, 1979

Mr. Mark G. Schoenberg  
Associate Director for Operations  
and Interagency Coordination  
The Regulatory Council  
Washington, D. C. 20460

Dear Mr. Schoenberg:

The following is in response to your memorandum of July 20, 1979, regarding Calendar Production.

As indicated in Chairman Fanning's letter of December 11, 1978, the Board does not normally utilize rulemaking procedures for the purpose of issuing rules and regulations which have measurable economic impact or regulate conduct of employers and unions that would be of interest and use to the Regulatory Council. After studying your memorandum of July 20, I have concluded that the National Labor Relations Board has no pending regulations which would warrant submission to the Council's Calendar. We will, of course, continue to monitor our operations and should the occasion arise when it would be appropriate for the Board to issue such regulations, we will, to the extent appropriate, be happy to inform the Regulatory Council of the use of such procedures and their impact.

If you have any questions on this matter, please do not hesitate to contact me.

Sincerely yours,

*William A. Lubbers*  
William A. Lubbers  
Executive Secretary



UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1825 K STREET, NW  
WASHINGTON, D C 20006

November 19, 1979

The Honorable Douglas M. Costle  
Chairman  
United States Regulatory Council  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Mr. Costle:

The purpose of this letter is to report the progress the Occupational Safety and Health Review Commission has made in achieving the goals of Executive Order 12044, Improving Government Regulations.

As you know, the Review Commission is an independent adjudicatory agency established pursuant to the Occupational Safety and Health Act of 1970. The agency is separate and distinct from the Occupational Safety and Health Administration of the Department of Labor. The primary function of the Commission is to review contests filed under the Occupational Safety and Health Act. Performing this function are approximately 45 Administrative Law Judges who hold hearings and decide cases. The three Presidentially appointed Commission Members constitute the second level of review within the agency and review designated Judges' decisions prior to possible review by the appropriate Federal Court of Appeals.

Because of this type of independent adjudicatory mandate, OSHRC does not engage in substantive "rulemaking". Those rules which have been published by the Review Commission are largely procedural in nature, such as the Rules of Procedure and regulations required for implementation of applicable statutes such as the Freedom of Information Act.

The Review Commission has published four pamphlets on its operation which are available without charge to the public. One pamphlet explains the operation of the Review Commission within the context of the statutory scheme of the Act. Another lists and

explains the Rules of Procedure from the viewpoint of a contesting party in an action before the Review Commission. This pamphlet is also available in Spanish. The final pamphlet is a complete print of the Review Commission's Rules of Procedure which are codified in volume 29 of the Code of Federal Regulations Section 2200.1 through Section 2200.110. These pamphlets may be obtained from the Information Office of the Review Commission, 1825 K Street, N.W., Room 701, Washington, D.C. 20006.

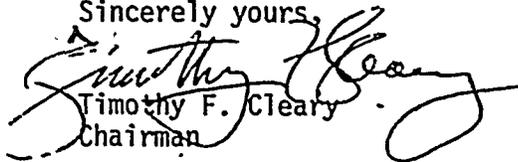
Two additional projects are currently in progress. The first is a revision of several of the Rules of Procedure. In addition to eliminating certain procedural problems existing in the present rules, it is our hope that the revised version of the rules will be easier to understand. The elimination of procedural complexities will both speed and simplify the adjudication process. The second project is the promulgation of a new procedural mechanism that provides for a separate simplified method of case-handling to be available in certain classes of cases at the option of the parties. The simplified procedure will make it easier for persons without experience in legal or administrative matters to present cases before the Review Commission. The procedure will also allow less complex cases to be handled more informally at less expense, both in time and money, to all concerned. We are most optimistic that the simplified procedure will have the combined effects of making Review Commission adjudications more responsive, more understandable, and more accessible to both employers and employees.

The public response to the proposed changes has been gratifying. On October 30, 1978, an information public hearing was held in Chicago and on February 8, 1979, another public hearing was held in Washington. I believe it is essential that this agency continue to share with the American people proposed Rules of Procedure changes which affect parties appearing before the Commission.

The Commission has instituted a program of one day seminars across the country designed to explain the role of the Commission and to assist the affected public in utilizing the services of the Commission.

I look forward to our continued support of improved regulatory management. Please let me know if I can be of further assistance.

Sincerely yours,

  
Timothy F. Cleary  
Chairman

TFC/svp



OFFICE OF THE  
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

November 21, 1979

BY HAND

The Honorable Douglas M. Costle  
Chairman  
United States Regulatory Council  
401 M St., S.W.  
Washington, D.C. 20460

Dear Mr. Costle:

This responds to your letter of November 15, 1979, received by our Office on November 20, 1979, in which you request that the Commission state its reasons for not submitting an entry for the second edition of the Calendar of Federal Regulations.

As you know, the Commission published in September, 1979, a revised agenda of important regulatory matters which are likely to come before it for consideration in the next several months, and has recently transmitted a copy of that agenda to you for use in connection with the Regulatory Council's work. As explained in an earlier letter of Chairman Williams dated February 1, 1979, the Commission is appreciative of the opportunity to cooperate with the Council as an active observer; however, we do not believe that it would be consistent with the Commission's Congressionally-mandated status as an independent regulatory agency to participate directly in the Council's work.

I trust that this letter confirms our relationship with the Regulatory Council. Please feel free to contact me if you require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Ferrara", written over the typed name.

Ralph C. Ferrara  
General Counsel